D.T.E. 02-45 December 12, 2002

Petition of Global NAPs, Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration to establish an interconnection agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts.

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I. INTRODUCTION

This arbitration proceeding between Global NAPs, Inc. ("GNAPs" or "Global") and Verizon New England, Inc. d/b/a Verizon-Massachusetts ("Verizon") (collectively, "Parties") is held pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 252 ("Act").[1] By this Order, the Department of Telecommunications and Energy ("Department") makes findings necessary to finalize an interconnection agreement between the Parties.

Verizon is an incumbent local exchange carrier ("ILEC"), as defined by the Act, within the Commonwealth of Massachusetts. GNAPs is a competitive local exchange carrier ("CLEC") with an approved tariff to provide local exchange service to residential and business customers throughout Massachusetts.

II. PROCEDURAL HISTORY

On July 30, 2002, GNAPs filed a Petition for Arbitration of an interconnection agreement with Verizon ("Petition"). Verizon responded to GNAPs' Petition on August 22, 2002 ("Response"). On September 4, 2002, the Department held a procedural conference and technical session. On September 10, 2002, the Parties filed direct testimony. GNAPs filed the testimony of William J. Rooney, Vice President and General Counsel of GNAPs; and Lee L. Selwyn, President of Economics and Technology, Inc. Verizon filed the testimony of Terry Haynes, Manager, State Regulatory Policy and Planning Group; Karen Fleming, Manager - Risk Management; Jonathan B. Smith, Executive Director - Local Interconnection Billing and

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1 Section 252(b) of the Act permits a carrier to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers have occurred. 47 U.S.C. § 252(b)(1).

Wholesale Billing Support; William Munsell, Negotiator - Interconnection Contracts; and Peter J. D'Amico, Senior Product Manager - Interconnection Product Management Group. Pursuant to the arbitration schedule, the Parties filed a First and Second Stipulation of Issues on September 10 and September 25, 2002, respectively.[2] The evidentiary hearing was held on October 9, 2002, at which GNAPs presented its witness, Lee Selwyn, and Verizon presented Terry Haynes and Peter D'Amico as witnesses.[3] On October 17, 2002, the Parties filed record request responses.[4] Finally, on October 21 and 28, 2002, the Parties filed their initial and reply briefs, respectively.

The twelve issues for the Department's resolution are related to: (1) the designation of a single Point of Interconnection; (2) responsibility for the costs associated with transporting telecommunications traffic to the single Point of Interconnection; (3) the definition of local calling areas; (4) the use of virtual NXX codes; (5) the "change of law" provisions; (6) two-way trunking; (7) the appropriateness of incorporating by reference other documents into the interconnection agreement; (8) insurance requirements; (9) audit rights; (10) reciprocal

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2 The Parties did not reach any additional agreements in the Second Stipulation of Issues since the filing of the First Stipulation of Issues.

3 The Parties presented witnesses on only the first four issues raised in the Petition, and agreed to waive cross-examination on the remaining issues.

4 Also on October 17, 2002, pursuant to G.L. c. 25, § 5D, Verizon filed a Motion for Protective Treatment of Confidential Information contained in its responses to RR-DTE-4. The Department has reviewed the response to RR-DTE-4 and agrees that the data contained therein include specific customer proprietary information for Massachusetts and other Verizon states relating to Verizon's interstate Internet Protocol Routing Service ("IPRS") that may properly be protected from public disclosure under § 5D. Accordingly, the Department grants Verizon's motion.

collocation; (11) the "applicable law" provision; and (12) obligations during network upgrades and maintenance.[5]

III. STANDARD OF REVIEW

The standards for arbitrations by state commissions are set forth in 47 U.S.C. § 252(c), which states, in relevant part, that a state commission shall:

> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications Commission ("FCC")] pursuant to section 251;
> (2) establish any rates for interconnection, services, or network elements according to [section 252(d).]

Additionally, § 251(c)(2) of the Act defines the obligations for ILECs to interconnect with other carriers. Specifically, each ILEC has the duty:

> [T]o provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.

Furthermore, § 252(e)(3) provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements."

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[5] The first nine issues were presented by GNAPs in its Petition. Verizon raised the three additional issues in its Response.

IV. UNRESOLVED ISSUES

Each of the nine issues GNAPs presents to the Department contains a general policy question. The nine issues also present specific disputes over precise contract language. Many of these disputes Verizon challenges as unrelated to the broad policy questions identified. The three additional issues Verizon presents to the Department focus on specific contract language in dispute. As to the resolution of the issues presented by GNAPs, GNAPs requests that the Department render decisions only on the broad policy issues it identifies in its Petition, and then order the Parties to implement contract language embodying these policy decisions (GNAPs Petition ¶ 13). Verizon opposes this approach and asks the Department to rule on the specific contract language in dispute (Verizon Brief at 2).

Resolving the general policy issues and as many as we can of the particular contract language disputes is the better approach. Resolution of only the policy issues would leave a significant portion of the disputed contract language unresolved, and thus would only delay finalization of the Parties' interconnection agreement. Accordingly, in this Order, we seek to resolve all disputed contract language. At a minimum, we endeavor to provide sufficient direction to allow the Parties to resolve their differences.[6] Lastly, we note the Department will

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[6] For contract language that we do not directly address, because, for instance, the record is insufficient to address, or, for contract language that cannot be resolved based upon the direction we provide in this Order, we direct the Parties to continue to negotiate these provisions with particular attention to any relevant policy findings contained herein. In the event that the Parties are unable to craft mutually-agreeable contract language for such provisions, if any, for submission during the compliance phase of this arbitration proceeding, each party shall present its proposed contract language and provide specific support for its position in the compliance filing.

review all modified contract language during the compliance phase of this proceeding.

A. Should Either Party be Required to Install More Than One Point of Interconnection ("POI") per LATA? (Arbitration Issue No. 1)

Should Each Party Be Responsible for the Costs Associated with Transporting Telecommunications Traffic to the Single POI? (Arbitration Issue No. 2)

1. Introduction

For Arbitration Issue No. 1, the Parties do not disagree that GNAPs has the right to designate a single POI[7] ("SPOI") per LATA. In fact, the Parties state that while they have reached conceptual agreement on this issue, they have not arrived at contract language to implement that agreement. See First and Second Stipulation of Issues.

Arbitration Issue No. 2 involves the issue of financial responsibility for transporting telecommunications traffic. GNAPs argues that each carrier is responsible for transporting telecommunications traffic to the GNAPs-determined SPOI and Interconnection Point[8] ("IP"). Verizon, however, argues that consistent with Department precedent, GNAPs must compensate Verizon, in accordance with prior Department orders, for GNAPs-originated traffic that Verizon transports from the SPOI to Verizon's multiple IPs located at its tandem or end offices.

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7 The POI is the point where Verizon's network physically interconnects with the CLEC's network (see Tr. at 23).

8 The IP is the "point on the terminating carrier's network from which the terminating carrier will provide transport and terminate on its network a call delivered by an originating carrier." See MediaOne/Bell Atlantic Arbitration, D.T.E. 99-42/43-A at 4, n.6 (March 15, 2001) ("MediaOne Supplemental Order"). In other words, the IP is the rating point that determines financial responsibility for transport and termination costs, including reciprocal compensation. See id.; see also Tr. at 24.

GNAPs contends that it is necessary to integrate Arbitration Issue Nos. 1 and 2 because "if the effect of Verizon's position on Issue 2 is to impose financial penalties on Global NAPs for electing a single point of interconnection, then [GNAPs] believe[s] that operates to undermine the true characterization of Verizon's position on Issue 1" (GNAPs Brief at 15, citing Tr. at 21). Because we find that Arbitration Issue Nos. 1 and 2 are intertwined, the Department addresses them together.

2. Positions of the Parties

a. GNAPs

GNAPs claims that each party should be responsible for transporting its own traffic on its side of the POI (GNAPs Brief at 14). According to GNAPs, the reciprocal compensation rules and the ISP Remand Order[9] "mirroring rule" prohibit imposition of a transport charge on intra-exchange traffic (id. at 16). GNAPs claims that Verizon should not be able to impose a transport charge on intra-exchange traffic above and beyond the reciprocal compensation it recovers because such an approach violates Rule 703(a)[10] and also constitutes double recovery (id. at 17). GNAPs further argues that because Verizon accepted the FCC's rate cap for traffic

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[9] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. April 27, 2001) ("ISP Remand Order").

[10] Rule 703(a) states that "[e]ach carrier shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting carrier."

bound for Internet Service Providers ("ISPs"),[11] "Verizon is required to exchange its traffic at the FCC rate, and cannot impose additional transport charges" (id. at 18).

GNAPs cites to the Virginia Order[12] issued by the Wireline Competition Bureau of the FCC to support its position (GNAPs Brief at 18). According to GNAPs, the Virginia Order rejected Verizon's virtually geographically relevant interconnection points ("VGRIPs")[13]

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11 The FCC adopted an intercarrier compensation rate cap for ISP-bound traffic as an interim measure to resolve problems associated with the current intercarrier compensation regime for ISP-bound traffic. Specifically, the rate cap for ISP-Bound traffic applies "only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate." ISP Remand Order at ¶¶ 77, 89 (emphasis in original) (footnote omitted).

12 In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration; Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration; and Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., CC Dockets Nos. 00-218, 00-249, 00-251, Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002) ("Virginia Order").

13 Under Verizon's VGRIPs proposal, geographically relevant CLEC-IPs would be located at a collocation site at each Verizon tandem office in a multiple-tandem LATA, at each Verizon end office in a single-tandem LATA, or at other Verizon-designated wire centers in LATAs with no tandem offices. Virginia Order at ¶ 37. VGRIPs is similar to Verizon's geographically relevant interconnection points ("GRIPs") proposal, which Verizon has proposed in Massachusetts and other jurisdictions in the past. GRIPs is based on the "proposition that the parties should exchange local traffic with each other within a reasonable geographic proximity to the terminating end user customer, defined by Bell Atlantic as a 'geographically relevant point.' According to Bell Atlantic, each party would be responsible for the transport to and from the geographically relevant point, and once traffic is delivered to an IP, reciprocal

(continued…)

proposal, i.e. that the CLEC be financially responsible for all transport between the SPOI and Verizon designated IPs, based on an interpretation that Verizon cannot assess charges on its side of the POI (id., citing Virginia Order at ¶ 53).

GNAPs acknowledges that Verizon's proposal in this proceeding differs from the one proposed in Virgina in that Verizon's proposal in Virginia "contemplated that the CLEC was responsible for all transport costs between the Verizon designated IP and the CLEC," while "Verizon's proposal here [in Massachusetts] simply requires that Global be responsible for all transport costs from Global to the Verizon designated IPs" (id. at 19). GNAPs claims that, notwithstanding this difference, Verizon's proposal in this proceeding "violates the reciprocal compensation rules and the reasoning of the Virginia Order applies" (id.).

Moreover, GNAPs claims that the authority on which Verizon relies for its position rests on orders that "generally predate the Virginia Order" (GNAPs Brief at 19). GNAPs states that the Virginia Order "dealt expressly with the transport issue and ruled in favor of the CLEC against imposition of transport charges" (id. at 21). GNAPs further argues that in arbitrations brought by GNAPs in New York, Illinois, Rhode Island, Connecticut, and Florida, the decisions have been uniformly against imposing transport charges on CLECs (id. at 23).

Additionally, GNAPs argues that "there is no reasonable basis for imposing transport costs on Global" because Verizon's size allows it to realize significant economies of scale and scope that make its transport costs de minimis (GNAPs Brief at 24). GNAPs further states that

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13 (…continued)
compensation charges would apply." D.T.E. 99-42/43, 99-52, at 10 (August 25, 1999) ("MediaOne") (citations omitted).

the use of fiber optics has caused the cost of transport to decline (id. at 24-25). GNAPs argues that Verizon seeks to impose transport charges that are in excess of its costs (id. at 26-27). In support of this position, GNAPs submits a "proxy model to evaluate the degree to which Verizon may be over-recovering its transport costs" (id.). GNAPs claims that the transport costs that Verizon seeks to impose are "excessive and discriminatory" and in violation of §§ 251(c)(2)(C) and (D) of the Act (id. at 27). GNAPs concludes by stating that requiring Verizon to pay for all transport on its side of the POI is consistent with rulings of other state commissions (id.).

b. Verizon

Verizon does not dispute that GNAPs has the option to designate a SPOI in the LATA within Verizon's network (Verizon Brief at 8). Verizon contends that GNAPs need only interconnect "at any technically feasible point within" Verizon's network, as required by applicable law (id., citing 47 U.S.C. § 251(c)(2)(B)). Verizon states that the Parties appear to have reached "substantive agreement" on this issue, yet GNAPs's contract proposals "do not confine GNAPs' choice of [POI] to any technically feasible point on Verizon's network" (id.) (emphasis in original).

On the other hand, Verizon claims that its proposed contract language permits GNAPs to physically interconnect with Verizon at a single point on Verizon's existing network (Verizon Brief at 7). Verizon further argues that its proposed language allows the Parties to establish IPs for purposes of determining financial responsibility in accordance with the Department's prior rulings (id. at 8). Verizon states that "the issue in dispute is whether

GNAPs must compensate Verizon in accordance with the Department's orders for GNAPs' originated traffic" (id. at 8-9).

Verizon argues that valid Department decisions support its position. Specifically, Verizon contends that the Department's Tariff No. 17 Order[14] and MediaOne Supplemental Order found that all local exchange carriers in Massachusetts are responsible for transporting their originating traffic all the way to the terminating end user or paying for transport provided by another carrier to accomplish the same (Verizon Brief at 9). Verizon further argues that the MediaOne Supplemental Order is "exactly on point in this issue" because Verizon and GNAPs are at present interconnected by an End Point Fiber Meet ("EPFM")[15] at GNAPs' Quincy switch (id., citing Exh. VZ-GNAPs-9). Verizon insists that, "[c]onsistent with [the MediaOne Supplemental Order], GNAPs is responsible for compensating Verizon for the transport of GNAPs' traffic that Verizon provides between the EPFM and Verizon's IP which, pursuant to Verizon's proposed contract language, will be located at Verizon's tandems or end offices serving the terminating end user" (id. at 10) (footnotes omitted).

Regarding GNAPs' argument that Verizon's transport costs are de minimis, Verizon states that this two-party arbitration is not the appropriate proceeding to reconsider the TELRIC-based unbundled network element ("UNE") rates for dedicated and common transport

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14 Tariff No. 17 Order, D.T.E. 98-57 (March 24, 2000) ("Tariff No. 17 Order").

15 An EPFM is a type of mid-span meet (see Verizon Brief at 10). For an EPFM, the POI is designated at the physical location of either the CLEC's or the ILEC's switching point; for a mid-span meet, the POI is designated on the transport facility between the CLEC's and ILEC's switching points (see Tr. at 48).

recently established in the Department's UNE Rates Order[16] (Verizon Brief at 11). Verizon states that the Department, in the D.T.E. 01-20 proceeding, conducted an extensive review of Verizon's costs and established new rates for unbundled dedicated and common transport (id.). Verizon claims that GNAPs, however, is apparently not satisfied with the results of the UNE Rates Order and seeks, in this arbitration proceeding, to collaterally attack the rates established in that order (id. at 11-12). Verizon argues that the Department should not reach conclusions in this proceeding contrary to those it recently reached in the rate proceeding specifically designed to examine Verizon's costs (id. at 12).

3. Analysis and Findings

Section 251(c)(2) of the Act requires the incumbent to provide for interconnection with the local exchange carrier's network:

> (A) for the transmission and routing of telephone exchange service and exchange access;
> (B) at any technically feasible point within the carrier's network;
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
> (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory.

Furthermore, the FCC established additional rules concerning where a carrier must deliver traffic originating on its network to the terminating carrier.[17] These rules, which were identified by the Wireline Competition Bureau of the FCC in its Virginia Order, establish that:

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16 UNE Rates Investigation, D.T.E. 01-20 (July 11, 2002) ("UNE Rates Order").

17 See, e.g., In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, ¶¶ 209, 1062 (rel. August 8, 1966) ("Local Competition Order").

> (1) competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC's network;
> (2) competitive LECs may, at their option, interconnect with the incumbent's network at only one place in a LATA;
> (3) all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination; and
> (4) competitive LECs may refuse to permit other ILECs to collocate at their facilities.

Virginia Order at ¶ 67 (footnotes omitted). Rules 1, 2, and 3 are at the crux of the Parties' dispute for Issues 1 and 2.

Before turning to the issues at hand, we find it appropriate to comment on the weight of the Virginia Order in this arbitration proceeding. The Wireline Competition Bureau of the FCC preempted the jurisdiction of the Virginia State Corporation Commission to arbitrate disputes between Verizon Virginia, Inc. and WordCom, Inc., Cox Virginia Telecom, Inc., and AT&T Communications of Virginia, Inc., and issued its Virginia Order, standing in the stead of the Virginia State Corporation Commission. Thus, the Virginia Order is analogous more to another state commission decision than an order issued by the FCC.

As a general rule, the Department does not find other state commission decisions to be dispositive on proceedings conducted in Massachusetts. In fact, the Department "ordinarily place[s] little weight on the decisions reached in other states, since we rely for our decisions on the record presented here." Phase 4 Order[18] at 23.[19] But, the Virginia Order is unique.

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18 Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 4) (December 4, 1996) ("Phase 4 Order").

19 See also UNE Rates Order at 24 ("[T]he Department will not make findings on any issue based solely on the fact that another state (or any number of states) made a similar
(continued...)

Although the Wireline Competition Bureau explicitly stated that it was acting in place of the Virginia State Corporation Commission, we nonetheless find it reasonable to place greater weight on the Wireline Competition Bureau's interpretation on the intent and application of FCC rules than we would another state commission's interpretation of the same FCC rules, which we view as merely instructive. In addition, unlike most state arbitration decisions, the Wireline Competition Bureau of the FCC did not consider Virginia law when it rendered its decision. Thus, potential conflicts between another state's law and Massachusetts law are absent. Accordingly, we find the Virginia Order to be persuasive authority; however, we do not consider it binding on the Department because of the fact that it is not a mandate from the FCC.[20] With this in mind, we turn to Arbitration Issue Nos. 1 and 2.

GNAPs is entitled to interconnect at any technically feasible point, which includes the right to select a SPOI in each LATA. But, as noted above, the Parties do not dispute this. Rather, it is the issue of responsibility for transport costs on each carrier's side of the POI that is driving the dispute in Arbitration Issues No. 1 and 2.

As to the issue of financial responsibility raised in Arbitration Issue No. 2, GNAPs

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19 (…continued)
finding, however useful or instructive other states' actions may be").

20 In contrast, in D.P.U./D.T.E. 97-88/97-18-A [Phase II] (August 8, 2001) ("Payphone Reconsideration Order"), the Department found that the Common Carrier Bureau's decision in In the Matter of Wisconsin Public Service Commission Order Directing Filings, 14 FCC Rcd. 9978 (Com. Car. Bur. 2000) ("Wisconsin Order") was binding on state regulators, unless stayed or reversed. Unlike the Wisconsin Order, the Virginia Order is an arbitration decision issued by the Wireline Competition Bureau acting on behalf of the Virginia State Corporation Commission. Thus, we find it appropriate to consider it persuasive, but not binding, authority.

suggests that the Department's precedent on these issues, which predate the Virginia Order, no longer apply. GNAPs is wrong. The Virginia Order rejected Verizon's language requiring AT&T, Cox, and WorldCom to establish GRIPs or VGRIPs with Verizon at designated or agreed upon points on the carriers' networks. Virginia Order at ¶¶ 37, 51-53. This finding mirrors the Department's own finding which rejected Bell Atlantic's [now Verizon's] GRIP proposal in MediaOne by concluding that "neither the Act nor the FCC's rules require MediaOne or any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for geographically relevant interconnection points." MediaOne at 41. Nevertheless, GNAPs' argument misses the mark, because Verizon proposes neither GRIPs nor VGRIPs in this arbitration -- an important point of distinction that GNAPs concedes (see GNAPs Brief at 19).

Accordingly, the Department's precedent on these issues is relevant and on point, as Verizon has argued. We further note that our precedent is in accord with Rule 3 contained in the Virginia Order, referenced above. The Department first articulated its policy of shared financial responsibility in MediaOne when the Department found that "[t]he FCC envisioned both carriers paying their share of the transport costs to haul traffic to the meet point under the interconnection rules." MediaOne at 42. The Department elaborated in its Tariff No. 17 Order that:

> [W]here the parties interconnect and exchange traffic at a mid-span meet, Bell Atlantic would be forced to provide transport of its originating traffic up to the mid-span meet, and, for CLEC originating traffic, Bell Atlantic would have to provide transport from the mid-span meet to the Bell Atlantic end-user customers. In the latter case, reciprocal compensation payments only compensate Bell Atlantic for the portion of the call from Bell Atlantic's end

> office or tandem switch to the end-user customers -- Bell Atlantic's costs to transport CLEC-originated traffic from the mid-span meet to its end office or tandem switch are left "stranded."

Tariff No. 17 Order at 130-131. To resolve this transport cost recovery issue, the Department found as follows:

> Transport costs should be assigned in a competitively neutral manner. Carriers are responsible to provide transport or pay for transport of their originating calls, including reciprocal compensation, between their own originating and the other carrier's terminating end-user customers. This is regardless of where the carriers choose to physically interconnect. CLECs may decide where to interconnect with the LEC, but each carrier is responsible to transport its own traffic or to pay the costs of transporting its originating traffic all the way to the terminating end user. Carriers may choose the most efficient method to accomplish this task.

Id. at 133-134. The Department further explained that:

> In the MediaOne situation, if MediaOne chooses to interconnect with Bell Atlantic only at a single mid-span meet in the LATA, then MediaOne shall arrange or pay for transport of MediaOne-originated calls from the meet point to Bell Atlantic's end or tandem office.

MediaOne Reconsideration Order[21] at 16-17. Additionally, the Department stated in the MediaOne Supplemental Order that:

> Both carriers are responsible for delivering their traffic (either through self-provisioning or leasing another carrier's transport) from the Mid-Span Meet to the terminating carriers' appropriate interconnection point ("IP"), which may be located at a remote tandem or end office.

MediaOne Supplemental Order at 4, n.6. Our precedent is directly on point for Arbitration Issue Nos. 1 and 2, and the Department finds that GNAPs has not presented a convincing

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[21] MediaOne/Greater Media/Bell Atlantic Arbitration, D.T.E. 99-42/43, 99-52 (March 24, 2000) ("MediaOne Reconsideration Order").

argument to disturb settled precedent.

GNAPs challenges Verizon's imposition of transport costs, alleging that these costs are de minimis and, based on a GNAPs-produced "proxy [cost] model," are in excess of Verizon's costs. The Department recently conducted an 18-month investigation into Verizon's UNE costs in the UNE Rates Order. Our investigation determined that Verizon's transport costs are not de minimis, as GNAPs would have us believe, and we are establishing transport rates accordingly. Moreover, we agree with Verizon that this two-party arbitration is not the appropriate proceeding to reconsider the TELRIC-based UNE findings in the Department's UNE Rates Order. Accordingly, we reject GNAPs' argument.

We now turn to the contract language raised by the Parties. First, the Department agrees with Verizon that Interconnection Attachment §§ 5.2.2 (Trunk Group Connections and Ordering) and 5.3 (Switching System Hierarchy and Trunking Requirements) are not related to any issue being arbitrated in this proceeding. Nor is there any record evidence upon which to make a determination. Accordingly, we make no findings on the disputed language in these provisions.

Second, Verizon's proposed definitions for IP and POI in Glossary §§ 2.46 (IP) and 2.67 (POI),[22] and its proposed language in Interconnection Attachment §§ 2.1.1 and 2.1.2, are consistent with the Department's precedent, as discussed above. For that reason, and the

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22 GNAPs refers to Glossary §§ 2.45 and 2.66 in its Petition, but these sections do not contain any disputed language. Therefore, the Department assumes GNAPs intended to refer to §§ 2.46 and 2.67, which do contain disputed text related to Arbitration Issue Nos. 1 and 2.

reasons discussed below, Verizon's proposed findings are adopted. GNAPs' proposed language attempts to make the IP and the POI one and the same, to give GNAPs the sole discretion in determining the IP for itself and for Verizon, and to shift the burden of transport costs onto Verizon, all in contravention of Department precedent. The IP is the financial demarcation point for termination and transport costs, including reciprocal compensation, while the POI refers to the physical point of interconnection; GNAPs' proposal confuses these concepts and is therefore rejected. Furthermore, GNAPs proposes, without explanation, to define the POI in Glossary § 2.67 by citing to 47 C.F.R. § 51.319(b) in which the FCC defines the Network Interface Device ("NID"). Because the definition of a NID has nothing to do with a POI, GNAPs' proposal is rejected.

Third, GNAPs' proposed language in Interconnection Attachment § 7.1.1.1 attempts to force Verizon to accept as its IPs, for the delivery and termination of reciprocal compensation traffic to Verizon's customers, those IPs that GNAPs selects for itself. That proposal is in violation of our precedent. Verizon's proposal, however, is consistent with Department precedent in that each carrier has the right to select its own IPs for this traffic. Accordingly, we adopt Verizon's language.

Similarly, we find GNAPs' proposal, to strike in its entirety Interconnection Attachment § 7.1.1.2, to be more consistent with Department policy. More precisely, Verizon's proposal seeks to circumvent Department precedent by forcing GNAPs to forfeit its right to select its IP or IPs. For instance, if GNAPs establishes a collocation site at a Verizon end office wire center, GNAPs may elect, at its sole discretion, that such collocation site be established as the

GNAPs IP for traffic originated by Verizon customers served by that end office. Verizon, however, may not dictate that GNAPs designate this collocation arrangement as its IP for Verizon-originated traffic. Accordingly, we adopt GNAPs' proposal.

Additionally, we find that GNAPs' proposal for Interconnection Attachment § 7.1.1.3 is more consistent with our precedent, as well as with our findings on Interconnection Attachment §§ 7.1.1.1 and 7.1.1.2, which permit each party to choose its own IP. Verizon's proposed § 7.1.1.3 seeks to force GNAPs to forgo a portion of the intercarrier compensation to which it is entitled if an agreement to transition pre-existing GNAPs IPs to IPs that conform to Interconnection Attachment § 7.1.1.1[23] is not reached within 30 days. But, we see no basis under such circumstances to impose a financial penalty for the transition of existing IPs, which were presumably properly established between the Parties. Accordingly we adopt GNAPs' proposed language.

Finally, the Department adopts Verizon's proposed language in Interconnection Attachment §§ 3.4 and 3.5 regarding alternative interconnection arrangements; namely, end point meet arrangements. Given the number of technical and operational aspects that can vary between two different end point meet arrangements, a case-by-case approach is preferable to the boilerplate language that GNAPs proposes and also is consistent with Department and FCC precedent. See MediaOne at 39; Local Competition Order at ¶ 553.

B. Should Verizon's Local Calling Area Boundaries be Imposed on GNAPs, or May GNAPs Broadly Define its Own Local Calling Areas? (Arbitration Issue

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[23] Verizon's proposed language also requires the IPs to conform with § 7.1.1.2, which we rejected above.

No. 3).

1. Introduction

Arbitration Issue No. 3 concerns whether Verizon's local calling areas[24] are binding on GNAPs on a retail and wholesale basis. GNAPs proposes to offer LATA-wide local calling to its customers; however, the Parties disagree as to whether Verizon's proposed language would bar GNAPs from offering LATA-wide retail calling areas, and whether, for the purpose of intercarrier compensation, GNAPs-originated LATA-wide traffic is properly considered local or toll.

2. Positions of the Parties

a. GNAPs

GNAPs argues that it should be permitted to define its own local calling areas because there is no economic or technical reason for local calling areas to be smaller than a LATA (GNAPs Petition ¶ 41; Exh. GNAPs-1, at 62). But, GNAPs contends, Verizon's proposed Template Agreement forces GNAPs to adopt an inefficient network architecture and prevents GNAPs from offering an economically-viable LATA-wide local calling area service (GNAPs Petition ¶ 44). GNAPs asserts that it is not attempting to dictate the manner in which Verizon divides its retail offerings into "local" and "toll," and thus, by the same token, Verizon should not be permitted to force GNAPs to mirror Verizon's calling areas (id. ¶ 42).

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24 A "local calling area" is the area within which a customer with basic exchange service can place a call without incurring a toll charge. The Department has defined local calling areas as comprising a customer's home and contiguous exchanges. See New England Telephone and Telegraph Company, D.P.U. 89-300, at 69-70 (1990) ("D.P.U. 89-300").

Moreover, GNAPs argues that the ISP Remand Order established a new regulatory regime that controls all of the intercarrier compensation issues in this arbitration (GNAPs Brief at 5). GNAPs asserts that under the ISP Remand Order, all telecommunications traffic that is not exchange access or information access traffic is subject to the reciprocal compensation rules (id.). GNAPs contends that because the Act defines exchange access traffic or toll traffic as traffic that is subject to a separate toll charge imposed by the originating carrier, and because GNAPs proposes to offer its customers LATA-wide retail calling areas without the imposition of a separate toll charge, GNAPs-originated calls from one end of a LATA to the other are therefore local calls subject to reciprocal compensation and not to the imposition of access charges by Verizon (Exh. GNAPs-1, at 51; GNAPs Reply Brief at 10).

Consequently, GNAPs contends that Verizon's proposal violates the ISP Remand Order by imposing access charges on local calls (GNAPs Brief at 44). More specifically, GNAPs asserts that traffic originated by GNAPs' customers and terminated by Verizon is reciprocal compensation traffic, not subject to the imposition of access charges (Exh. GNAPs-1, at 53; GNAPs Brief at 45). In addition, GNAPs argues, when Verizon picks up a GNAPs-originated call at the SPOI and delivers it to its own customer within the LATA, Verizon is wholly compensated through the assessment of reciprocal compensation (GNAPs Brief at 46).

GNAPs further argues that the ISP Remand Order "mirroring rule" prohibits Verizon from imposing an additional origination or transport charge on reciprocal compensation traffic (GNAPs Brief at 12). GNAPs asserts that Verizon has adopted the FCC's rate caps for ISP-bound traffic, and therefore the mirroring rule requires that the FCC's rate caps apply to all intercarrier compensation on reciprocal compensation traffic exchanged with GNAPs (id. at 13). Furthermore, GNAPs argues that because Verizon has consistently argued that competition rather than regulation should control its offerings and prices, Verizon should not now be permitted to retreat behind its calls for a generic proceeding (Exh. GNAPs-1, at 58).

b. Verizon

Verizon states that it accepts GNAPs' right to define its own local calling areas for its retail customers (Verizon Response ¶ 47; Verizon Brief at 29). But, Verizon contends, the real dispute in Issue 3 is the manner in which local calling areas are defined for the purpose of intercarrier compensation, which the Department has already addressed (Verizon Response ¶ 47; Verizon Brief at 29). Specifically, Verizon states that Federal law gives state commissions the authority to determine local calling areas for the purpose of intercarrier compensation (Verizon Response ¶ 51; Verizon Reply Brief at 8). Verizon states that the Department, however, has not done so, but instead determined, in the Phase 4-B Order,[25] that arbitration proceedings are not the proper forum for considering changes to Verizon's existing tariffed local calling areas because local calling areas present issues of great complexity suitable only for generic proceedings (Verizon Response ¶ 47, citing Phase 4-B Order at 9). Verizon

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[25] Consolidated Petitions of New England telephone and Telegraph Company d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration of Interconnection Agreements between NYNEX and the Aforementioned Companies, Order on Motion by TCG for Reconsideration, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 2B) (Phase 4B), (May 2, 1997) ("Phase 4-B Order").

argues that relying on the results of a two-party arbitration to order a change in Verizon's local calling areas for the purpose of intercarrier compensation would be inconsistent with this Department precedent (Exh. VZ-2, at 4; Verizon Reply Brief at 8). Verizon claims that GNAPs' Petition and proposed contract changes add nothing to the Department's previous analysis and thus should be rejected (Verizon Response ¶ 47).

Verizon argues that for practical implementation and compliance with Federal law, calling areas must be symmetrical for the purpose of intercarrier compensation (Verizon Brief at 32). Verizon contends that asymmetrical calling areas would give rise to regulatory arbitrage, where a carrier could pay low reciprocal compensation rates for its customers' outbound calls, but collect a higher access rate for its customers' inbound calls (Exh. VZ-2, at 17; Verizon Brief at 32). Verizon asserts that implementation of GNAPs' proposal would significantly impact its compensation structure and therefore its ability to act as the carrier of last resort, a fact recognized by the Rhode Island Public Utilities Commission (Verizon Brief at 32). Verizon avers that GNAPs' proposal could amount to a Verizon subsidy of GNAPs' operations, a likelihood acknowledged by the New York Public Service Commission (id. at 35).

Finally, Verizon argues that the "mirroring rule" in the ISP Remand Order does not apply to this case because the mirroring rule requires Verizon to offer to exchange reciprocal compensation traffic at the FCC's interim ISP traffic rates, and also requires GNAPs to accept Verizon's offer, which GNAPs has not done (Verizon Reply Brief at 9). In fact, Verizon maintains that the Parties have agreed not to exchange § 251(b)(5) traffic at the same rates as

ISP-bound traffic, and GNAPs should not be heard to argue otherwise (id. at 11).

3. Analysis and Findings

The issue in this case is not whether GNAPs must mirror Verizon's calling areas on a retail basis. Verizon has stated that GNAPs is free to determine its own retail calling areas, and GNAPs has not identified, nor could the Department find, any language in the contract that would prevent GNAPs from offering its retail customers whatever retail calling plans it chooses.

The issue is, simply, how to define a local calling area for the purpose of intercarrier compensation. On this question, Department precedent is clear. The Department has already considered and rejected a request to alter Verizon's local calling areas in a two-party arbitration. In Phase 4-B of the Consolidated Arbitrations, Teleport Communications Group, Inc. ("TCG") advanced the same argument as that advanced by GNAPs in this arbitration, that forcing CLECs to abide by Verizon's (then NYNEX) local calling areas for the purpose of intercarrier compensation would have anti-competitive effects, and that TCG should be free to define its own local calling area for both its retail customers and for its intercarrier compensation regime with Verizon. See Phase 4-B Order at 4-5.

The Department rejected TCG's argument on the grounds that a change to Verizon's local calling areas had far-reaching consequences and was an issue of such complexity that resolution through a two party arbitration would be inappropriate. Phase 4-B Order at 8. In contrast, the existing local calling structure established in D.P.U. 89-300 was the result of a proceeding in which all interested Parties had the opportunity to comment; any change to this structure must be deliberated in a similarly open forum. As discussed below, there has been no change in law at the Federal level that would require a reconsideration of the Department's findings in its Phase 4-B Order. Nor has GNAPs advanced any other arguments that the Department has not considered and rejected before. GNAPs has, therefore, presented no basis upon which the Department should depart from its precedent.

In D.P.U. 89-300, the Department balanced customers' interests in having the largest local calling areas possible against the advantages of a comprehensive state structure for local calling areas that was cost-based and fair, that ensured rate continuity for customers and earnings stability for Verizon (then New England Telephone), and that protected universal service. The Department determined that a reasonable local calling area would consist of a customer's home and contiguous exchanges. D.P.U. 89-300, at 69-70.

Although GNAPs argued in its Brief that the ISP Remand Order "changed everything" regarding intercarrier compensation and the distinctions between local and toll, GNAPs did not advance, nor could the Department find, any basis on which the Department's prior conclusions regarding local calling areas was changed by the ISP Remand Order or any other FCC decision. The ISP Remand Order explicitly recognized that intrastate access regimes in place prior to the Act remain unchanged until further state commission action. ISP Remand Order at ¶ 39. Furthermore, the ISP Remand Order continues to recognize that calls that travel to points beyond the local exchange are access calls. Id. at ¶ 37. In addition, the FCC, when striking the term "local traffic" from its rules, recognized that there is a difference between a call being geographically local and merely rated as local. The FCC explicitly recognized that the term "local" is not statutorily defined and that its use created considerable ambiguity as to whether what is being referred to is a locally rated call or a jurisdictionally local call. Id. at ¶¶ 45, 46. As such, the ISP Remand Order has no impact on the calling area structure implemented by the Department in D.P.U. 89-300.

While low-priced LATA-wide calling may be an attractive option to many consumers, it appears that GNAPs' ability to offer this service on an economical basis is contingent upon the alteration of the access regime, which is not an appropriate subject for investigation in a two-party arbitration.

For the reasons discussed above, while GNAPs is free to offer its customers whatever retail calling areas it chooses, GNAPs is required to follow Verizon's Department-established local calling areas for the purpose of intercarrier compensation. Although a call from Plymouth to Pepperell might not "feel" like a toll call to a GNAPs customer if GNAPs does not assess a separate charge for that call, the call is still a toll call for the purpose of intercarrier compensation, and GNAPs is required to pay access charges. The Department's conclusion is consistent with the FCC's holding that intrastate access regimes in place prior to the Act will continue to be enforced until altered by state commissions. See ISP Remand Order at ¶ 39. On this record, we decline GNAPs' invitation to alter the existing access regime.

Turning to the specific contract language related to this issue, we find as follows. For Glossary §§ 2.34 (Extended Local Calling Scope Arrangement), 2.48 (IXC), 2.57 (Measured Internet Traffic, 2.76 (Reciprocal Compensation Traffic), 2.92 (Toll Traffic); Interconnection Attachment §§ 2.2.1.1, 2.2.1.2 (Trunk Types), 7.3.3, 7.3.4 (Traffic Not Subject to Reciprocal

Compensation), and 13.3 (Number Resources, Rate Center Areas and Routing Points), we find that GNAPs' proposals improperly equate local calling with flat-rated toll and would permit GNAPs to alter Verizon's local calling areas for the purpose of intercarrier compensation. Because GNAPs' proposals are in violation of Department precedent and policy with regard to the definition of local calling, Verizon's proposed language is adopted.

With regard to Glossary § 2.84 (Switched Exchange Access Service), Verizon's proposed language offers a detailed description of the service. Because GNAPs did not explain why Verizon's proposed language is unreasonable, or offer descriptive language of its own, we adopt Verizon's proposal.

We find that the provisions in Glossary §§ 2.47 (Integrated Services Digital Network), 2.56 (Main Distribution Frame), 2.77 (Retail Prices), 2.83 (Switched Access Summary Usage Data), and 2.91 (Third Party Claim); and Interconnection Attachment § 7.1 (Reciprocal Compensation Traffic Interconnection Points) do not appear to be relevant to Issue 3. The Department makes no finding concerning language for these provisions. Similarly, the Department makes no finding concerning language in Interconnection Attachment § 6.2 (Traffic Measurement and Billing over Interconnection Trunks) because, despite having been referenced in GNAPs' Petition, this provision does not appear to be in dispute.

C. Can GNAPs Assign to its Customers NXX Codes that are "Homed" in a Central Office Switch Outside of the Local Calling Area in Which the Customer Resides? (Arbitration Issue No. 4)

1. Introduction

A virtual NXX ("VNXX") is an NXX that is assigned to a central office switch outside of the customer's local calling area. VNXX service is designed to allow customers in the "virtual exchange" to place calls to the VNXX customer as if that customer had a physical presence in the virtual exchange, and the calls therefore appear local to the calling party. The Parties disagree whether Verizon's proposed language would bar GNAPs from assigning VNXX numbers to its customers, whether VNXX calls are local or toll, and whether they are subject to reciprocal compensation rules or to the access charge regime.

2. Positions of the Parties

a. GNAPs

GNAPs argues that the primary function of NXX codes is routing, not rating, and that NXX codes no longer need to be associated with any particular geographic location (GNAPs Reply Brief at 13). Consequently, GNAPs states, the use of VNXXs will allow it to offer its retail customers wide local calling areas, similar to the calling areas currently enjoyed by wireless customers (GNAPs Petition ¶ 49).

Furthermore, GNAPs argues that because of advances in telecommunications technology, particularly fiber optics transmission systems, distance is no longer a cost driver in telephone calls, and the distinction between "local" and "toll" is obsolete (Exh. GNAPs-1, at 73; Tr. at 112). GNAPs contends that the classification of Foreign Exchange[26] ("FX") traffic

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[26] Foreign Exchange service provides local telephone service from a central office which is outside (foreign to) the subscriber's exchange area. In its simplest form, a user picks (continued...)

as "local" or "toll" is determined according to the called and calling party's NXXs, not the physical location of the customers (Tr. at 73; GNAPs Brief at 33). GNAPs asserts that Verizon's FX service is essentially the same as the VNXX service that GNAPs proposes to offer its customers (Exh. GNAPs-1, at 69; GNAPs Petition ¶ 53). Accordingly, GNAPs contends, because VNXX serves the same function as FX, VNXX calls must be classified as local or toll in the same manner (GNAPs Brief at 34). Additionally, GNAPs argues that ILECs sometimes offer FX service without the use of dedicated facilities, which is what GNAPs is doing: offering FX service without the use of dedicated facilities (Exh. GNAPs-1, at 78; Tr. at 76-77).

GNAPs further argues that if Verizon billed its own traffic based on the physical locations of the calling and called parties rather than by NXXs, Verizon would have to segregate its FX traffic in order to avoid billing toll charges, but it now does not do so (GNAPs Brief at 35). GNAPs argues that there is no readily available information that tells a carrier the physical location of a called or calling party, nor does there need to be, because there are no additional costs imposed when VNXX is used (id.). GNAPs asserts that this lack of information was the basis upon which the Wireline Competition Bureau of the FCC rejected Verizon's proposal to classify calls based on the geographic end points of the call in the Virginia Order (id. at 35-36). GNAPs contends that because VNXX traffic is not subject to

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26 (…continued) up the phone in one city and gets dial tone in another city. He will also receive calls dialed to the phone in the foreign city. This means that users in the foreign city can place a local call to get the user. Newton's Telecom Dictionary (17th Edition).

the imposition of a toll charge, it is therefore local traffic subject to reciprocal compensation, and not subject to the imposition of access charges by Verizon (id. at 32).

GNAPs also asserts that Verizon should not be allowed to impose access charges on VNXX traffic, as VNXX service does not impose any additional transport costs on Verizon or cause Verizon to lose toll revenue (GNAPs Brief at 36, 37). GNAPs asserts that GNAPs' VNXX service imposes no additional charges on Verizon, because Verizon's work is done when it hands the call off to GNAPs at the SPOI (id. at 47). GNAPs argues that because Verizon itself offers VNXX service to its customers, it would be discriminatory to allow Verizon to impose access charges on VNXX traffic (id. at 38). GNAPs avers that Verizon's proposal turns the current "calling party's network pays" ("CPNP") regime "on its head" by seeking to impose access charges on VNXX calls when Verizon is already being compensated by its customers through its retail rates (id. at 40).

Moreover, GNAPs asserts that Verizon's 500-number Internet Protocol Routing Service/Single Number Service ("IPRS/SNS")[27] is unlike Verizon's traditional FX service, in that the IPRS customer only pays Verizon transport for the distance between the IPRS "hub" and the IPRS customer (GNAPs Brief at 41). GNAPs contends that its use of VNXX service allows it to compete with Verizon's IPRS service (Exh. GNAPs-1, at 83, 105; GNAPs Brief at 42).

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27 With IPRS service, a Verizon end-user dials a number to connect to the ISP who subscribes to the IPRS service. The call is routed through the end-user's local Verizon central office and then connected to a Verizon IPRS hub. At the IPRS hub the call is handed off to the ISP via a dedicated link separately purchased by the ISP. See Exh. GN-VZ 1-13.

GNAPs further argues that it plays a major role in providing local dial-up access for Massachusetts ISPs, and if GNAPs was not permitted to offer its customers locally-rated inbound calls, through the use of VNXX, hundreds of thousands of residences and small businesses would lose access to dial-up internet access until their ISPs migrate to another carrier (Exh. GNAPs-1, at 68). GNAPs also argues that many of its ISP customers collocate their internet gateway equipment in GNAPs' central office buildings, and if GNAPs ceases offering VNXX service, these ISPs will have to seek another location for their equipment (id.).

Finally, GNAPs asserts that Verizon has not provided sufficient evidence of a workable solution to show that it has surmounted the VNXX billing problems identified by the FCC in the Virginia Order (GNAPs Brief at 44).

b. Verizon

Verizon asserts that it does not object to GNAPs assigning VNXX numbers to its customers (Tr. at 131-132). Rather, Verizon states that it objects to the goals of GNAPs' proposed VNXX service, which are to: 1) require Verizon to pay GNAPs reciprocal compensation for interexchange calls; and 2) deprive Verizon of the access charges it is entitled to for such toll calls (Verizon Response ¶ 67).

Contrary to GNAPs' contentions, Verizon argues that NXXs continue to serve both a routing and a rating purpose within the industry, as each NXX is assigned to a switch for routing and a rate center for rating purposes (id. ¶¶ 68-70). Verizon avers that GNAPs' proposed VNXX service is a substitute toll-free calling service which enables a Verizon customer to call a GNAPs VNXX customer without paying a toll charge, as if GNAPs had assigned its customer an 800 number (Verizon Brief at 41). Verizon argues that this expands a Verizon customer's local calling area without compensating Verizon for transport outside of its local calling area (id.). Verizon asserts that local calling areas are defined by localities and exchanges, not by NXXs, and that the FCC confirmed that number assignment does not control intercarrier compensation (id. at 42 n.123, 43).

Verizon also disputes GNAPs' claim that VNXX is the same as Verizon's FX service (Verizon Response ¶ 92). Verizon asserts that when it offers FX, the FX customer pays Verizon for transporting the FX customer's calls from the foreign exchange where the NXX is "homed" to the FX customer's location (Exh. VZ-2, at 42; Verizon Response ¶ 92). Verizon further asserts that, with FX service, the FX customer has a dedicated line from the foreign exchange to their physical location, and if the FX customer wants to have FX service from more than one rate center within a LATA, the FX customer is required to pay Verizon higher monthly charges in order to compensate Verizon for transport from additional rate centers (Exh. VZ-2, at 43; Verizon Response ¶ 93). Verizon argues that its FX offering merely shifts payment responsibility from one user to another as a convenience to the called party (Exh. VZ-2, at 26; Verizon Brief at 45).

However, Verizon argues, under GNAPs' proposed VNXX offering, GNAPs expects Verizon to provide transport for free, and to pay reciprocal compensation to GNAPs (Verizon Response ¶ 92). Verizon argues that unlike FX, where Verizon is compensated by the called party for the service, GNAPs' VNXX service would provide GNAPs with all of the compensation while requiring Verizon to provide transport for free (Verizon Brief at 45).

Verizon also argues that GNAPs' VNXX service is not analogous to Verizon's IPRS service, because its IPRS service includes a charge for transport (Tr. at 135). In addition, Verizon states that it deploys hubs as close as geographically possible to concentrations of calling parties, and that more than 80 percent of the IPRS traffic is terminated at the hubs on a local basis (id.). Verizon asserts that GNAPs is attempting to use Verizon's network to provide toll-free interexchange calling to Verizon customers and then charge Verizon for that privilege (Verizon Brief at 44).

Moreover, Verizon argues that, contrary to GNAPs' assertion, VNXX does not represent state of the art technology, because carriers have been offering toll-free service for decades, and there is nothing in GNAPs' VNXX proposal that can be considered new from a technological perspective (Exh. VZ-2, at 33). Verizon asserts that the vast majority of states that have considered GNAPs' VNXX proposal have rejected it, including Ohio, Illinois, California, Florida, Pennsylvania, Texas, South Carolina, Tennessee, Connecticut, Georgia, Maine, Missouri, and Nevada (Verizon Brief at 46).

Finally, Verizon claims it has developed a plan for the proper rating of VNXX calls. Specifically, Verizon states that the plan would require a CLEC to either submit a list of VNXX numbers to Verizon, or conduct a billing study which would allow Verizon to estimate the amount of traffic being delivered to CLEC VNXX numbers (Exh. VZ-2, at 41; Tr. at 166-167). Therefore, Verizon urges the Department to adopt Verizon's proposed contract language.

3. Analysis and Findings

This issue, like issue 3, turns on the distinction between "local" and "toll." Because Verizon does not dispute GNAPs' ability to assign NXXs as it chooses, the question of whether GNAPs may assign to its customers VNXXs "homed" in rate centers outside of the local calling area where the customer resides is not before us. GNAPs did not identify, nor could the Department find, any proposed language which would explicitly bar GNAPs from offering VNXX. Rather, the issue before the Department is similar to Issue 3, namely, whether GNAPs' VNXX service is properly considered local or toll, and whether it is subject to reciprocal compensation rules, or to the existing access regime. For the reasons discussed below, we find that VNXX calls will be rated as local or toll based on the geographic end points of the call.

First, although GNAPs testified at the hearing that Verizon's Tariff No. 10[28] contains a list of NXXs which define local calling areas, GNAPs did not provide this list as part of its Exhibit 3, nor does the Department find such a list in Tariff No. 10. Tariff No. 10 does contain, however, a list of the exchanges and municipalities that make up the local calling area for each Massachusetts exchange.[29] Verizon's Tariff No. 10 defines local calling areas in terms of municipalities and geographic areas, not in terms of NXXs. GNAPs' proposal, however, by assigning non-geographic NXXs, would make intraLATA toll calls originated by Verizon customers appear as local calls to both the calling party and the Verizon switch, depriving

28 Tariff No. 10 contains the terms, conditions and rates at which Verizon offers exchange and network services.

29 Tariff No. 10, Part A, Section 6.1.

Verizon of toll charges for which it has an approved tariff, and enabling GNAPs to claim entitlement to reciprocal compensation for having terminated what is actually a toll call.

Second, GNAPs' argument that its proposed VNXX service is indistinguishable from Verizon's FX service, and therefore entitled to the same treatment, is unpersuasive. Verizon's FX service uses dedicated facilities to transport FX traffic to the FX customer's location, and the FX customer pays Verizon for the cost of transporting that traffic (Exh. VZ-2, at 42). Thus, the cost of FX service to the FX customer grows more expensive as the customer elects to receive calls from additional foreign exchanges. FX service does not alter the traditional definitions of local and toll, it merely shifts responsibility for paying the toll charge to the called party (id. at 26). Although GNAPs argued that ILECs in other states offer FX service without the use of dedicated facilities, GNAPs provided no evidence that Verizon offers FX service without the use of dedicated facilities in Massachusetts. Record evidence points exclusively the other way (id. at 42). Nor did GNAPs provide evidence that ILECs offering FX service without the use of dedicated facilities were not compensated for transporting the traffic to the FX customer. Accordingly, we give little weight to GNAPs' assertions on this point.

Similarly, GNAPs' VNXX service is readily distinguishable from Verizon's IPRS service. With IPRS, calls are routed to a hub, and the IPRS customer pays Verizon for transport from the hub to its location. Because Verizon only receives compensation for transporting traffic from the hub, it has an economic incentive to build as many hubs as possible, as close to the IPRS customer's calling parties as possible, which Verizon has indeed done. More precisely, 80 percent of IPRS traffic is local when it terminates at the hub (Tr. at

135).

Third, Verizon has proposed a solution to the billing of VNXX calls, which had not been considered by the Wireline Competition Bureau of the FCC (id. at 168-169). Verizon's proposed solution provides alternative methods by which carriers might work collaboratively to determine the geographic end points of a call, thus properly rating VNXX calls as local or toll. The Department finds that Verizon's proposed plan for rating VNXX calls as local or toll is responsive to the billing concerns raised by the Wireline Competition Bureau in the Virginia Order.[30] While the Department anticipates that it may eventually be called upon to help the Parties work out some of the details in Verizon's proposed plan for properly rating VNXX calls, an initial difficulty in implementation is not sufficient reason to forfeit any hope of the eventual proper rating of these calls. Indeed, when a carrier seeks to offer a service that complicates enforcement of the existing access regime, it is appropriate to require that carrier to work cooperatively with other carriers involved to ensure that the other carriers are duly compensated for their roles in carrying the traffic generated as a result of that service. To do otherwise would be to permit a de facto alteration of Verizon's local calling areas, which the Department has already determined to be an inappropriate topic for a two-party arbitration. We find Verizon's proposal to be an acceptable starting point to develop the cooperative billing process necessary to properly rate VNXX calls. Accordingly, we direct the Parties to submit, as part of the compliance filing, contract language that incorporates one or both of Verizon's

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30 As noted, supra, because the FCC's Wireline Competition Bureau was standing in the place of the Virginia Commission in issuing the Virginia Order, the Virginia Order is persuasive authority, but is not binding on the Department.

proposed solutions.

In the Department's discussion of Verizon's local calling areas, supra, the Department rejected GNAPs' attempt to change Verizon's wholesale local calling areas as inappropriate for resolution in a two-party arbitration. GNAPs' VNXX proposal is even more ambitious, in that it would change both Verizon's wholesale and retail calling areas. The Department will not make such significant changes in a two-party arbitration. If GNAPs cannot ensure that all LECs, including Verizon,[31] have access to the geographic end point data necessary to properly rate a call as local or toll, and are properly compensated, then GNAPs cannot provide virtual NXX service to its customers.

GNAPs indicated that it serves a large number of Massachusetts ISPs through VNXX, and indicated further that GNAPs will have to stop serving these ISPs if GNAPs is prevented from offering locally-rated inbound calling via VNXX. If so, it appears that GNAPs' ability to serve ISPs is the result of merely shifting transport costs to other LECs and of billing reciprocal compensation for completing calls that are properly rated as toll. Unlike Verizon's IPRS service, where Verizon has an economic incentive to deploy as many new facilities as possible, GNAPs' VNXX would artificially shield GNAPs from the true cost of offering the service and will give GNAPs an economic incentive to deploy as few new facilities as possible. By artificially reducing the cost of offering the service, GNAPs will be able to offer an artificially low price to ISPs and other customers who experience heavy inbound calling. The VNXX

[31] Verizon no longer has a monopoly on the residential market, thus Verizon is unlikely to be the only carrier whose customers call GNAPs' VNXX numbers.

customers will be able to offer an artificially low price to their calling party subscribers, thus sending inaccurate cost signals to the calling parties concerning the true cost of the service. The result would be a considerable market distortion based on an implicit Verizon subsidy of GNAPs' operations. While this decision may frustrate GNAPs' ability to offer VNXX under the same financial terms which it may to this point have enjoyed, this decision does not explicitly bar GNAPs from offering VNXX service.

Although the Wireline Competition Bureau approved a VNXX proposal similar to GNAPs' proposal, this approval was based upon the narrow ground that there was no technically feasible manner of determining the geographic end points of a call, and therefore no alternative but to rate calls according to the originating and terminating NXXs. Virginia Order at ¶¶ 301-302. As discussed above, Verizon has proposed alternative methods for determining the geographic end points of calls, and the Department finds that Verizon's proposal is responsive to the concerns raised in and consistent with the Virginia Order.

Turning to the contract language in dispute, we find that Glossary §§ 2.71 (Purchasing Party) and 2.77 (Retail Prices), referenced in GNAPs' Petition, are not relevant to Issue 4.[32] Accordingly, the Department makes no finding concerning language for these provisions. As to Glossary §§ 2.72 (Rate Center Area), 2.73 (Rate Center Point), and 2.76 (Reciprocal Compensation Traffic); and Interconnection Attachment § 13 (Number Resources, Rate Center Areas and Routing Points), we find that Verizon's contract language is in keeping with the Federal and Department policy concerning the distinctions between local and toll and the

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32 We believe GNAPs incorrectly identified these contract sections.

operation of the access regime. Accordingly, consistent with the discussion above, Verizon's proposed language is adopted.

D. Should the Agreement Include Language that Expressly Requires the Parties to Renegotiate Reciprocal Compensation Obligations if Current Law is Overturned or Otherwise Revised? (Arbitration Issue No. 5)

1. Introduction

GNAPs seeks an express and specific change of law provision concerning reciprocal compensation, in the event of a future reversal or modification to the FCC's ISP Remand Order. Verizon contends that its standard change-in-law language provides for such a contingency.

2. Positions of the Parties

a. GNAPs

GNAPs argues that Verizon's proposed contract language, which acknowledges GNAPs' right to renegotiate reciprocal compensation obligations if the current law is overturned or otherwise revised, is inadequate because it "does not directly pertain to the ISP Remand Order as the Interconnection Agreement does not deal with compensation for ISP bound traffic" (GNAPs Brief at 54). According to GNAPs, the ISP Remand Order deserves "special attention" because it is currently being revisited by the FCC and its outcome is uncertain (id.). GNAPs does not provide explicit contract language on this issue, but instead requests a policy determination from the Department (id. at 53).

b. Verizon

Verizon argues that the agreed upon change-in-law provisions contained in General

Terms and Conditions §§ 4.5 and 4.6 "squarely address any future reversal or modification to the ISP Remand Order and, thus, there is no need for a specific niche provision that would address the ISP Remand Order" (Verizon Brief at 57). Moreover, Verizon states that GNAPs' counsel conceded this point during the arbitration hearing (id., citing Tr. at 179).

3. Analysis and Findings

GNAPs and Verizon appear to agree that a judicial reversal or modification of the ISP Remand Order may require renegotiation of the affected provisions of their interconnection agreement. At issue is whether the ISP Remand Order deserves "special attention" above-and-beyond Verizon's standard change-in-law language. As noted by Verizon, in response to a question from the Department, GNAPs' counsel conceded that specific focus on the ISP Remand Order was not necessary when he stated that "[i]n other states where we have not prevailed on this issue for one reason or another, we are of the opinion that Verizon's language will still enable us to enforce Federal law in terms of the arbitrated contract" (Tr. at 179). Accordingly, the Department finds GNAPs' proposal to include an express and specific change-in-law provision concerning reciprocal compensation, in the event of a future reversal or modification to the FCC's ISP Remand Order, unnecessary.[33] We find that the non-disputed change-in-law language contained in General Terms and Conditions §§ 4.5 and 4.6 is sufficient to address any future reversal or modification of the ISP Remand Order.

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[33] We note that this finding is consistent with the Virginia Order. See Virginia Order at ¶¶ 251, 254.

Turning to the contract language in dispute, we find as follows.[34] First, GNAPs cites to Glossary §§ 2.42 (Inside Wire or Inside Wiring) and 2.56 (Main Distribution Frame), and Interconnection Attachment § 6.1.1, as related to Issue 5, but these sections do not relate to Issue 5. Nor do they contain any disputed contract language. Accordingly, there is no need to render a decision on these sections.

Second, GNAPs fails to adequately support its proposed language in Glossary §§ 2.43, 2.74, and 2.75, Additional Services Attachment § 5.1, and Interconnection Attachment §§ 7.3.3 and 7.3.4. Consequently, we adopt Verizon's language. We note that, with respect to Glossary § 2.75 (Reciprocal Compensation), we find Verizon's proposed definition more complete.

Third, we adopt Verizon's proposed language in Interconnection Attachment § 7.4. We find that it is consistent with 47 C.F.R. § 51.711, which provides for symmetrical reciprocal compensation.

E. Whether Two-Way Trunking Should Be Available to GNAPs at GNAPs' Request? (Arbitration Issue No. 6)

1. Introduction

GNAPs seeks authority to request Verizon to provide two-way trunking at GNAPs' sole discretion. Verizon claims that operational issues for Verizon's network mandate mutual accord between the Parties as to the operational and engineering aspects of the two-way trunks

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[34] GNAPs also references Glossary §§ 2.57 (Measured Internet Traffic), 2.76 (Reciprocal Compensation Traffic), and 2.92 (Toll Traffic) as related to Arbitration Issue No. 5. We addressed the disputed language in these sections in our discussion of Arbitration Issue No. 3, supra, where we adopted Verizon's proposals.

between them.

2. Positions of the Parties

a. GNAPs

GNAPs contends that there are now, and will likely be in the future, disagreements between Verizon and GNAPs over the operational responsibilities and design parameters associated with two-way trunks (GNAPs Brief at 58). GNAPs claims that these disagreements result from the "onerous restrictions imposed by Verizon's proposed contract language upon Global's ability to order trunking facilities" (id.). For example, GNAPs argues that Verizon's proposal for GNAPs to forecast its traffic terminating on Verizon's network and Verizon's traffic terminating on GNAPs' network is "discriminatory and burdensome" (id.).

GNAPs instead proposes that each party forecast the traffic that it expects will terminate on the other carrier's network (GNAPs Brief at 58, citing Petition, Exh. B, Glossary §§ 2.93-95; Interconnection Attachment §§ 2.2-2.4, 5, 6, 9). GNAPs further proposes modifications which: (1) exclude measured Internet traffic; (2) replace "intrastate traffic" with "other traffic"; (3) remove restrictions on the manner of connection; (4) impose industry standards for equipment used in provisioning; (5) assure equality in service quality and provisioning through the ASR process; (6) equalize trunk underutilization restrictions; (7) eliminate asymmetrical upfront payment requirements over and above what would actually be due; (8) eliminate restrictive subtending arrangement requirements; and, (9) clarify the definition of "traffic rate" (id. at 58-59). According to GNAPs, "[t]hese proposed modifications are necessary and in totality provide for a more equitable offering of two-way trunking than those proposed by

Verizon" (id. at 59) (footnote omitted).

b. Verizon

Verizon agrees that GNAPs has the option to decide whether it wants to use one-way or two-way trunks for interconnection, pursuant to 47 C.F.R. § 51.305(f) (Verizon Brief at 72). However, Verizon states that because two-way trunks present operational issues for Verizon's own network, "the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them" (id.). In the hearing in response to a question from the Department, Verizon summarized its position on this issue:

> Again, Verizon's position is, you know, we don't have a problem with two-way trunks. It's just you need to lay some ground rules. And it could impact the integrity of [Verizon's] network because of sizing, blocking, utilization, stuff like that. We haven't had a problem with other CLECs agreeing to these terms, and actually it's worked out where traffic is flowing in both directions.

(Tr. at 186-187). According to Verizon, GNAPs' proposed contract language on this issue presents operational and technical problems for Verizon (Verizon Brief at 72).

3. Analysis and Findings

Pursuant to FCC rules, GNAPs' has the option to elect two way-trunking if two-way trunking is technically feasible. See Local Competition Order at ¶ 219; 47 C.F.R. § 51.305(f). But, the issue for the Department's resolution in this proceeding is whether GNAPs may dictate all operational and engineering aspects of the two-way trunks. The Department agrees with Verizon that two-way trunking presents operational and technical problems for Verizon's own network, and consequently, the Department must take into consideration Verizon's right, as "owner and manager of its network," to maintain its network integrity. See Tariff No. 17

Order at 148. The Department therefore rejects GNAPs' proposal for sole discretion over the operational responsibilities and design parameters of two-way trunks between the Parties. Accordingly, the Department adopts Verizon's proposed language for Interconnection Attachment § 2.4.2. Because two-way trunks affect operational issues of Verizon's network, the Department finds it reasonable for the Parties to mutually agree on the initial number of two-way trunks that the Parties will use.[35] Additionally, we adopt Verizon's proposal in Interconnection Attachment § 2.4.12 where Verizon would be able to disconnect trunks that are operating under 60 percent utilization. The Department finds this language appropriate for Verizon to maintain its network integrity and manage its network efficiently.

With respect to other disputed contract language, we find as follows. First, GNAPs fails to support its proposed language for Glossary §§ 2.94-2.95,[36] and Interconnection Attachment § 2.4.14. Sections 2.94-2.95 establish rating and billing parameters for interconnection trunks, which the Department finds appropriate for this interconnection agreement. For Interconnection Attachment § 2.4.14, GNAPs fails to support why it should be

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[35] We also adopt Verizon's proposed language concerning one-way interconnections trunks in Interconnection Attachment §§ 2.2.3, 2.3.1 and 2.3.1.1. Furthermore, we find that Verizon's proposed language in § 2.3.1 specifies the terms and conditions for traffic from GNAPs to Verizon. GNAPs proposes language that references traffic exchanged in both directions (i.e., from GNAPs to Verizon and from Verizon to GNAPs), which not only confuses the issue because one-way interconnection trunks are by definition for traffic in one direction, but also is unnecessary considering that § 2.3.2, which is undisputed, outlines the terms and conditions for traffic from Verizon to GNAPs.

[36] GNAPs cites to Glossary §§ 2.93-2.95 as related sections to the issue of two-way trunking. Section 2.93 is entitled "Toxic or Hazardous Substance" and both Parties agree on the contract language for this section. The Department therefore assumes that GNAPs intended to reference §§ 2.94-2.96.

entitled to an expedited period for replacing two-way interconnection trunk groups with one-way interconnection trunk groups, or even if such an expedited process is technically feasible or commercially viable. The Department finds that Verizon's proposed language for Glossary §§ 2.94 and 2.95, and Interconnection Attachment § 2.4.14 is reasonable and adopts it accordingly.

Second, Verizon claims that it does not understand what GNAPs is intending to accomplish with its edits to the definition of "Trunk Side" in Glossary § 2.96 (see Verizon Brief at 81). GNAPs has not explained its proposed changes. Accordingly, the Department finds that GNAPs has not properly presented and supported its proposal and hereby adopts Verizon's proposed language in § 2.96. We find Verizon's definition is clearer and more detailed than GNAPs' proposed definition.

Third, GNAPs also fails to explain why its proposed language in Interconnection Attachment §§ 2.2.4 and 2.4.11 is necessary or appropriate. The Department finds GNAPs' language in Interconnection Attachment §§ 2.2.4 and 2.4.11, especially in regards to "originating Party" and/or "terminating Party," confusing and unclear. We also agree with Verizon that the addition of the term "originating party" is "nonsensical" considering that both Parties originate traffic over two-way trunks (see Verizon Brief at 79). In contrast, Verizon's proposed language is consistent with Department precedent on an ILEC's right to manage its network, as discussed above. Additionally, the Department further finds it reasonable for GNAPs to bear the responsibility to submit an Access Service Request ("ASR") to augment a trunk as proposed by Verizon in Interconnection Attachment § 2.2.4. Accordingly, we find

Verizon's proposal reasonable and therefore adopt Verizon's proposed language.

Fourth, Verizon offers no compelling reason why language requiring Verizon to "reasonably accept ASRs submitted by GNAPs" is unnecessary or undesirable. GNAPs' proposal simply provides GNAPs with assurances that its ASRs will not be unreasonably denied. Accordingly, we find GNAPs' proposal reasonable and adopt GNAPs' proposed language in Interconnection Attachment § 2.4.10.

Fifth, we also adopt GNAPs' proposed language in Interconnection Attachment §§ 2.4.3 and 2.4.6. The Department finds it reasonable to specify in § 2.4.6 that the equipment be required only "where technically feasible." Regarding Interconnection Attachment § 2.4.3, as discussed above in relation to Arbitration Issue Nos. 1 and 2, and in accordance with Department precedent, GNAPs has the right to designate its POI at its own discretion.

Sixth, because GNAPs customers are primarily ISPs, the majority of traffic between GNAPs and Verizon originates on Verizon's network and terminates on GNAPs' network. Thus, the Department finds that GNAPs is in a better position to forecast trunk requirements for traffic originating and terminating on GNAPs' network. Accordingly, the Department adopts Verizon's language for Interconnection Attachment § 2.4.4.

Seventh, we see no reason to exempt Verizon from performance standards in connection with two-way interconnection trunks as Verizon has proposed in Interconnection Attachment § 2.4.13. Nor has Verizon provided any reason for us to do so. We understand that implementation of two-way trunking is not entirely within Verizon's control, however, we find that Verizon's proposal to exempt itself from meeting performance standards in connection with two-way trunks goes too far, and that more reasonable alternatives exist to address any lack of control. For instance, a "stopped clock" approach may be utilized for CLEC-caused delays in provisioning. Accordingly, § 2.4.13 should be stricken in its entirety, as GNAPs has proposed.

Eighth, we adopt Verizon's proposed Interconnection Attachment § 2.4.16. The term "Proportional Percentage of Use" ("PPU") is a billing factor that addresses the traffic flow, and its use as a billing factor is the most equitable way to apportion expenses when actual traffic data is available. But, the PPU cannot be determined in the absence of actual usage data, e.g. for the first billing cycle after a two-way trunk is established. Verizon's proposal to apportion expenses equally when actual usage data is absent is fair, and we adopt it. Moreover, Verizon's proposal is standard language for interconnection agreements in Massachusetts and other states (see Tr. at 184). Accordingly, the Department finds Verizon's proposed language for recurring charges in Interconnection Attachment § 2.4.16 is reasonable. The Department, however, rejects Verizon's proposed language for nonrecurring charges in Interconnection Attachment § 2.4.16. Verizon is a co-user of, and benefits from, the entire facility on which the two-way trunk rides. Accordingly, we find GNAPs' proposal to apportion nonrecurring charges equally for the entire facility on which the two-way trunk rides is appropriate. We adopt GNAPs' proposed language regarding nonrecurring charges in Interconnection Attachment § 2.4.16.

Finally, we adopt Verizon's proposed Interconnection Attachment § 9.2 (Access Toll Connecting Trunk Group Architecture). GNAPs has failed to support or explain its proposed changes. We agree with Verizon that GNAPs' proposal appears to violate routing and tandem subtending arrangements in the Local Exchange Routing Guide.

F. Is it Appropriate to Incorporate by Reference Other Documents, Including Tariffs, into the Agreement Instead of Fully Setting out Those Provisions in the Agreement? (Arbitration Issue No. 7)

1. Introduction

GNAPs opposes Verizon's incorporation by reference of other documents such as tariff rates, terms and conditions, and the CLEC Handbook, into the interconnection agreement. GNAPs argues that it is inappropriate to incorporate by reference other documents instead of fully setting out those provisions in the agreement.

2. Positions of the Parties

a. GNAPs

GNAPs maintains that the interconnection agreement should be the sole determinant of the rights and obligations of the Parties, yet GNAPs states that Verizon's proposal contains numerous citations and references to tariffs and other documents, such as the CLEC Handbook, which would, in effect, permit Verizon to change the terms and conditions of the interconnection agreement without GNAPs' assent (GNAPs Brief at 59). As a result, GNAPs claims, it would have no certainty over the very terms it has negotiated or arbitrated (GNAPs Petition ¶ 62).

In response to Verizon's argument that tariff filings are public documents which GNAPs has the right to contest, GNAPs contends that Verizon "misses the point" for several reasons (GNAPs Brief at 60). First, GNAPs asserts that a contract evidences a meeting of the minds and should not change because Verizon "decides it should" (id.). Second, GNAPs states that to become aware of a tariff filing would require it to investigate daily each and every tariff filing to determine the potential impact on its interconnection agreement (id.). Third, GNAPs argues that it would incur additional expenses over and above those related to the negotiation and arbitration of the contract (id.). Fourth, GNAPs notes that the CLEC Handbook is subject neither to Department review or approval (GNAPs Reply at 24).

Moreover, GNAPs contends that Verizon paints GNAPs proposal as an attempt to engage in regulatory arbitrage, but its proposal actually attempts to constrain Verizon from engaging in regulatory arbitrage by defeating contract language (id.). GNAPs explains that, although Verizon contends that GNAPs seeks to enjoy the lower of its interconnection prices or more recently determined prices set by the Department, if and when prices actually change due to a Department determination, this change constitutes a "change of law" which could be implemented pursuant to operation of that provision in the contract (id., citing §§ 4.5 and 4.6 of the General Terms and Conditions).

Lastly, GNAPs contends that because Verizon's references to its tariff and other documents are pervasive in the interconnection agreement, it has not proposed specific contract language related to this issue, but rather asks the Department to render a policy ruling that the interconnection agreement should be self-contained (GNAPs Reply at 23). Specifically, GNAPs urges the Department not to permit tariffs to supersede interconnection agreement rates, terms or conditions (GNAPs Brief at 60). Additionally, GNAPs requests that the Department permit Verizon to cross reference its tariffs solely for the purpose of utilizing its tariffed rates for UNEs and collocation (GNAPs Petition ¶ 63). GNAPs further requests that definitions contained in Verizon tariffs should not prevail over definitions within the Parties' interconnection agreement, and that "Tariff" should be defined so as to exclude incorporation of future tariffs (GNAPs Brief at 60-61).

GNAPs indicates that references to other documents occur throughout the agreement including in the following sections: General Terms and Conditions § 1; Interconnection Attachment §§ 1, 8, 9, and 10.6; Network Elements Attachment §§ 1.1, 1.3, 4.3, 4.4.6, 6.2 and throughout contract; and the Pricing Attachment (GNAPs Petition ¶ 64).

b. Verizon

Verizon maintains that tariff terms and conditions only supplement the terms and conditions of the interconnection agreement (Verizon Brief at 83). More specifically, Verizon explains that, under proposed General Terms and Condition § 1.2, the Parties would rely on the appropriate Verizon tariff for applicable rates; but, when there is a conflict between the tariff and the interconnection agreement, the interconnection agreement's terms and conditions supersede terms and conditions contained in the tariff (id.). Accordingly, Verizon asserts its proposed language is consistent with the Department's policy that interconnection agreement provisions control unless the Parties agree otherwise (id. 83-84, citing Tariff No. 17 Order).

With regard to prices, Verizon notes that the Parties agreed that applicable tariffs are the first source of prices for services under the agreement (Verizon Brief at 84). Despite this agreement, Verizon asserts that GNAPs' contract modifications freeze current tariff prices and create an arbitrage opportunity that could render the tariff process moot (id.). Verizon insists, on the other hand, that its proposal ensures that prices are set and updated in a manner that complies with Department guidelines, and is also efficient, consistent, fair and nondiscriminatory (id.). In fact, Verizon states, Verizon's proposal would conserve Department resources by relying on Department-approved prices and rates (id.).

Moreover, Verizon notes that the tariff process is not unilateral, and that, because Verizon's proposal gives precedence to the terms and conditions of the interconnection agreement, GNAPs would not be compelled to review the details of each tariff filing (id. at 85-86). Additionally, Verizon points out that the Illinois, New York, and Ohio Commissions, and the Rhode Island arbitrator, agreed with Verizon's position (Verizon Brief at 86).

Finally, Verizon argues that GNAPs' broad challenge to the appropriateness of referencing tariffs in the interconnection agreement does not apply to many of the contract sections in which GNAPs has deleted tariff references, some of which GNAPs neglects to list. Furthermore, Verizon contends that GNAPs' failure to address each section leaves many proposed contract changes unsupported (Verizon Brief at 88). Accordingly, Verizon urges the Department to reject GNAPs' proposed changes (id.).

3. Analysis and Findings

As a matter of policy, the Department does not oppose the incorporation of documents, including tariffs, by sufficiently specific reference. In particular, we find cross-referencing Verizon tariffs for prices to be reasonable, a practice which GNAPs did not oppose in its Petition (see GNAPs Petition ¶ 63). Moreover, we do not find that GNAPs' concerns about the tariff process persuade us otherwise. As Verizon notes, the tariff process is not unilateral and GNAPs may always participate in the tariff process to protect its interests. In fact, Verizon is obligated to provide electronic notification of proposed tariff changes to all CLECs with whom it has resale and interconnection agreements. Tariff No. 17 Order at 22-23.[37] This notice is provided on or about the same day that the proposed tariff changes are filed with the Department. Id. Thus, daily investigation by a CLEC is not necessary.[38] Additionally, we find that costs incurred in order to monitor new tariff filings to be part of a CLEC's normal cost of doing business. Accordingly, we reject GNAPs' request to define "tariff" to preclude future tariffs, which could, in effect, "freeze" prices in the interconnection agreement by limiting the reference to tariffs in effect on the day of a contract's execution. Accordingly, we approve Verizon's proposed language in its Pricing Attachment, as well as Network Element Attachment §§ 1.8 and 4.3.

As for references to documents other than tariffs, we find as a general matter that references to other such documents to be reasonable, even though modifications to these documents may not be reviewed or approved by the Department. To begin, we note that GNAPs has not actually identified any objectionable document reference in the Agreement, other than to tariff references, for our review. In addition, we find that the purpose of documents such as the CLEC Handbook are to facilitate the business relationship between

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37 Tariff No. 17 contains the Department-approved rates, terms and conditions that Verizon offers for interconnection and access to network elements.

38 Furthermore, we note that of the 38 tariffs filed in Massachusetts from July 1 to October 15, 2002, none of the tariffs contained substantive changes to services or rates that would impact any interconnection agreement between Verizon and GNAPs (see RR-DTE-6).

Verizon and a CLEC, and thus, the potential is small for the CLEC Handbook to materially affect the terms and conditions of the interconnection agreement in a way adverse to CLECs.

As to tariff terms and conditions superceding terms and conditions in the interconnection agreement, we previously determined that tariffs generally do not supersede negotiated or arbitrated terms. Tariff No. 17 Order at 19. Thus, our Tariff No. 17 Order already provides for that which GNAPs requests. Moreover, we find Verizon's proposed General Terms and Conditions §§ 1.1 and 1.2 to be more consistent with our policy, and approve these sections accordingly.

On the other hand, we are not necessarily opposed to GNAPs' suggestion to incorporate specific provisions of tariffs, or other documents, into the interconnection agreement directly.[39] But, GNAPs' failure to identify specifically which provisions it seeks to have incorporated in full from the tariff or other document, and the basis for incorporating that provision, prevents us from properly considering this approach. GNAPs may negotiate for insertion of specific provisions contained in documents, including tariffs or the CLEC Handbook, into the interconnection agreement, but we will dismiss any request for the insertion of specific language from other documents into the interconnection agreement which conflicts with any of the findings made in this order, unless agreed to, in whole, by both Parties.

Finally, in response to RR-DTE-7, Verizon states that if the Parties explicitly agree that

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39 Usually, rehearsal, in the body of a contract, of wording found in other, separate documents is unnecessary, for a contract "writing may incorporate other documents by reference and may indicate a method by which to determine the unstated terms that were actually agreed upon." Corbin on Contracts, § 95, n.12. But, the parties are free to incorporate specific provisions if they so choose.

an applicable tariff controls the terms of the offering, then "where an applicable tariff is incorporated by reference into an interconnection agreement, and the specific provision in the tariff was not provided in the interconnection agreement, the tariff provision would control since it was clearly the intention of the Parties to incorporate the tariff." We address this below.

In our Tariff No. 17 Order, at 18, we stated that the "Act encourages carriers to fashion agreements through negotiation and arbitration that may have differing provisions between the same incumbent and different CLECs, so that each contract reflects the individual business strategies and priorities of that CLEC." We therefore held that "[t]ariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering." Id. at 19. Additionally, we stated that "the terms and conditions of Tariff No. 17 represent a supplement to interconnection agreements from which carriers may choose to purchase services not addressed in their interconnection agreements." Id. at 21.

Consequently, we find that incorporation of additional terms and conditions from other documents by mere reference to the document is inconsistent with the policy we set forth in our Tariff No. 17 Order unless the Parties explicitly intend to incorporate each and every additional term by the reference. By "additional," we mean terms and conditions in the tariff, or other document, which are not inconsistent with the terms and conditions in the interconnection agreement, and for which there may, or may not, be a corresponding provision contained in the interconnection agreement. Permitting Verizon to impose all such terms and conditions from documents incorporated by reference without the explicit assent of the CLEC would allow Verizon to achieve a level of conformity in its agreement with different CLECs that would be inconsistent with our, and the Act's, preference for contracts that reflect the individual business strategies and priorities of each CLEC. Accordingly, we conclude that, where the Parties explicitly provide that an applicable tariff, or document, controls the terms and conditions of an offering, the agreement shall make clear that the Parties explicitly agree that all provisions in the tariff, or other document, which are not inconsistent with provisions in the interconnection agreement, or that are not addressed at all in the interconnection agreement, are also controlling.

In conclusion, we note that we do not directly address each and every provision in the interconnection agreement which contains a document or tariff reference; however, we expect that our findings above will allow the Parties to submit conforming contract language for all such provisions in the agreement.

G. Should the Interconnection Agreement Require GNAPs To Obtain Excess Liability Insurance Coverage of $10 Million and Require GNAPs to Adopt Specified Policy Forms? (Arbitration Issue No. 8)

1. Introduction

Verizon's proposed insurance requirements include the following: Commercial General Liability of $2 million; Excess Umbrella Liability of $10 million; Worker's Compensation of $2 million; and Commercial Motor Vehicle Insurance of $2 million. GNAPs proposes to reduce the limits to $1 million for the first three items, and to delete the requirement for Commercial Motor Vehicle Insurance. GNAPs also believes the precise form of insurance should be left to

GNAPs' discretion, and that it should be permitted to substitute an umbrella excess liability policy for the minimum limits (GNAPs Petition ¶ 67).

Additionally, Verizon's proposal requires GNAPs to reimburse Verizon for the cost of insurance if GNAPs' contractors' do not maintain insurance, but GNAPs proposes to make this obligation reciprocal (GNAPs Brief at 61). Finally, GNAPs proposes to delete Verizon's requirement that all real and personal property located on Verizon's premises be insured on a full replacement cost basis (id.).

2. Positions of the Parties

a. GNAPs

GNAPs argues that Verizon's proposal is burdensome. First, GNAPs notes that PacBell, a similarly situated ILEC, considered GNAPs' current commercial general liability insurance coverage of $1 million with $10 million in excess liability coverage sufficient; therefore, GNAPs questions why Verizon does not find its proposal acceptable (GNAPs Brief at 62-63). Additionally, given that SBC has agreed to lower insurance levels, GNAPs contends that Verizon is obligated to provide just cause why its insurance requirements are reasonable, a burden that Global alleges Verizon fails (GNAPs Reply at 24). Second, GNAPs states Verizon has not indicated any circumstance which has resulted in damages or injuries in excess of this amount committed by any CLEC, and insists that its current insurance coverage is adequate to cover any damages that may occur from GNAPs' operation (Exh.GNAPs-2, at 6; GNAPs Brief at 63). Indeed, says GNAPs, because GNAPs and Verizon interconnect at end point fiber meets, there is little risk of destruction to Verizon property and facilities (GNAPs Reply at

25). Third, GNAPs claims that Verizon's proposed automobile insurance requirement duplicates existing state requirements and is excessive, and, therefore, should be deleted (Exh. GNAPs-2, at 6; GNAPs Petition ¶ 66). Fourth, GNAPs argues that limits imposed on other CLECs in other proceedings before the Department should serve as a cap (Exh. GNAPs-2, at 7). Finally, GNAPs believes the precise form of insurance should be left to GNAPs discretion, and that it should be permitted to substitute an umbrella excess liability policy for the minimum limits (GNAPs Petition ¶ 67).

GNAPs also asserts that Verizon's requirements are discriminatory because Verizon self-insures and is, therefore, imposing costs where it has none in order to make GNAPs non-competitive (Exh. GNAPs-2, at 8-9; GNAPs Brief at 63; GNAPs Reply at 25). GNAPs admits that Verizon has not excluded the possibility that GNAPs can self-insure, but GNAPs maintains that Verizon has not provided the criteria to do so, which, GNAPs alleges, is indicative of the one-sided negotiations in which a monopoly with leverage engages (GNAPs Brief at 63).

GNAPs contends that § 21 of the General Terms and Conditions are related to Arbitration Issue No. 8 (GNAPs Petition ¶ 67).[40]

b. Verizon

Verizon argues that its proposed insurance requirements are reasonable and necessary

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[40] The Department notes that in Exh. GNAPs-2, the Direct Testimony of William J. Rooney, General Counsel for GNAPs, Mr. Rooney misstates Verizon's insurance requirements at issue in this proceeding and also incorrectly identifies the proper contract section (see Exh. GNAPs-2, at 5). GNAPs does properly identify on brief the specific contract language in dispute.

for the protection of its network, personnel, and other assets in the event GNAPs has insufficient resources (Verizon Brief at 96). In support, Verizon notes that its proposal is consistent with what Verizon requires of other carriers (id. at 96-97). Additionally, Verizon states that the interconnection agreement resulting from this proceeding will permit GNAPs to collocate at Verizon's facilities, and that collocation increases Verizon's risk and exposure to loss in many ways, including: (1) the risk of injury to employees; (2) possible damage to or loss of facilities; (3) the risk of fire or theft; (4) the risk of security breaches; and (5) possible interference with or failure of the network (id. at 99). Furthermore, Verizon asserts that because its risk is much greater than GNAPs' risk, it is appropriate for the agreement to reflect this asymmetrical risk (Exh. VZ-4, at 10; Verizon Brief at 103)

Moreover, Verizon asserts that the Parties operate in a volatile industry and in a society in which either party could be held liable for the acts of the other; accordingly, says Verizon, it maintains an extensive insurance program that protects both Parties (Verizon Brief at 99). On the other hand, Verizon states that GNAPs' proposed limits of $1 million are inadequate, noting that damage or injury to Verizon's network, assets or employees could easily exceed the limits of GNAPs' proposed coverage (Exh. VZ-4, at 8; Verizon Brief at 99).

Verizon further contends that automobile liability insurance and excess liability coverage should be provided to assure that GNAPs vehicles, or GNAPs' employees' vehicles, used in proximity to Verizon's network are adequately insured (Verizon Brief at 100). Verizon also maintains that GNAPs' proposal to make the insurance requirements provision a mutual obligation makes no sense because: (1) Verizon maintains a financially sound insurance program; (2) the risks are increased primarily for Verizon; and (3) for certain provisions, such as the additional insured provisions, it would counteract the benefits to have both Parties name the other as additional insureds (Exh. VZ-4, at 9-10; Verizon Brief at 100). As to GNAPs' contention that Verizon gains a competitive advantage because it self-insures, Verizon dismisses this claim as unfounded, noting Verizon's extensive insurance program (Verizon Brief at 103). Finally, Verizon cites to FCC decisions, as well as other state arbitration orders, in support of its proposed insurance requirements (Verizon Brief at 97, 102-103). Verizon notes that the aggregate amount of insurance it seeks from GNAPs falls below the FCC's measure of reasonableness (Verizon Brief at 97, citing Special Access Expanded Interconnection Order[41]). Accordingly, Verizon contends its proposed insurance requirements are reasonable and urges the Department to adopt its proposal.

3. Analysis and Findings

Two of Verizon's proposed insurance requirements are consistent with that which the Department has approved in Tariff No. 17, namely, the limits for Commercial General Liability and Worker's Compensation Insurance. Because the insurance requirements in Tariff No. 17 were approved by the Department, we find that Tariff No. 17 serves as an appropriate benchmark for insurance limits. Because Verizon's proposed limits for Commercial General Liability and Worker's Compensation Insurance are identical to the limits in Tariff No. 17 for

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[41] In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, CC Docket No. 93-162, Second Report and Order, FCC No. 97-208, (rel. June 13, 1997) ("Special Access Expanded Interconnection Order").

these two types of insurance, we find Verizon's proposal reasonable and hereby approve §§ 21.1.1 and 21.1.4 of the General Terms and Conditions.

As to the requirements that are different from Tariff No. 17, we find as follows. First, the umbrella/excess liability coverage of $5 million in Tariff No. 17 has been increased to $10 million. We do not dispute that the exposure and risk present with interconnection and access to network elements as a result of today's environment may have increased (Exh. VZ-4, at 6; Exh. DTE-VZ 1-1). Nor do we dispute Verizon's claim that the cost to secure the $10 million coverage is minimal (see Exh. VZ-4, at 13).[42] But, Verizon has not persuaded us to conclude that the limit should be twice that which the Department approved in Tariff No. 17. Verizon's interconnection tariff only requires CLECs obtain $5 million in umbrella/excess liability coverage, and Verizon has not proposed any modifications to increase the umbrella/excess liability coverage limit in Tariff No. 17. Thus, we conclude that $5 million in excess/umbrella liability coverage is adequate, even in today's environment, and we reject Verizon's proposed limit of $10 million. Likewise, GNAPs has not provided any persuasive argument that the limit should be reduced to one fifth of the Department-approved limit of $5 million. Accordingly, we direct the Parties to include a $5 million limit for excess umbrella liability coverage in § 21.1.3 of the General Terms and Conditions.

The second substantive difference between Verizon's proposal and Tariff No. 17 is that

[42] GNAPs failed to respond to the Department's record request, RR-DTE- 8, for information as to the cost to secure the $10 million insurance limit (see Tr. at 191). The Department therefore imputes a negative inference and concludes that the incremental cost to purchase this insurance is minimal, as Verizon contended.

Verizon seeks to require GNAPs to maintain Commercial Motor Vehicle Liability insurance of $2 million, whereas Tariff No. 17 does not contain any specific provision for this. We note that the FCC has found that "it is not unreasonable for LECs to require interconnectors to carry a reasonable amount of automobile insurance, provided that interconnector-employees are permitted to park their vehicles on LEC property." Special Access Expanded Interconnection Order at ¶ 345. We conclude similarly and find Verizon's proposal for a separate requirement is consistent with requirements in Tariff No. 17. We further conclude that a separate requirement for vehicle liability insurance is reasonable, given the variety of types of vehicles and equipment used on Verizon's property (Exh. DTE-VZ 1-1). Furthermore, because Verizon's proposed $2 million limit for automobile insurance is consistent with the limits for the other required forms of insurance, we find the limit amount reasonable. Accordingly, we approve Verizon's proposed § 21.2 of the General Terms and Conditions. Even though the interconnection agreement at hand requires insurance at levels above and in addition to that which is required pursuant to Tariff No. 17, the aggregate level of insurance of $18 million required by Verizon under the agreement, is still below the FCC's measure of reasonableness, which, the FCC stated, was one standard deviation above the industry average, or $21.15 million. See Special Access Expanded Interconnection Order at ¶¶ 346, 348.

As to the form of insurance proposed by Verizon, we find Verizon's proposal to be reasonable. GNAPs has provided no record evidence to support its position that it should be permitted to substitute an excess umbrella policy for the minimum limits for the different types of insurance coverage. Moreover, we agree with Verizon that "[i]t is unfair to put Verizon in a position to potentially be responsible for claims due to loss of GNAPs' real and personal property and that of its employees" (Exh. VZ-4, at 7). Therefore, we approve the language in Verizon's proposed § 21.1.5 of the General Terms and Conditions.

Additionally, given that the risk of collocation falls more heavily on Verizon and, further, given that Verizon maintains an extensive insurance program, we find little merit to GNAPs claim of competitive disadvantage. Likewise, we reject GNAPs' proposal for symmetry in the "additional insured" provision because such symmetry would be inconsistent with the function of this provision, i.e., to designate one insurance company to provide the lead defense (Exh. VZ-4, at 9; Verizon Response ¶ 205). As Verizon points out, the "additional insured" provision avoids insurance company "finger pointing" (Exh. VZ-4, at 9). Accordingly, we approve Verizon's proposed § 21.6 of the General Terms and Conditions. Regarding GNAPs' claim that Verizon has not provided the criteria for self-insurance, we note that GNAPs did not raise this claim in its Petition, or during the arbitration hearing. Accordingly, we have no record evidence upon which to reach the merits of this allegation.

In sum, we find GNAPs has failed to persuade us that its proposal is the more appropriate. Accordingly, the Department adopts Verizon's proposed § 21 of the General Terms and Conditions of the agreement, with the modifications noted above.

H. Should the Interconnection Agreement Include Language That Allows Verizon to Audit GNAPs' "books, records, documents, facilities and systems"? (Arbitration Issue No. 9)

1. Introduction

Verizon seeks to include a bilateral right to audit the other parties' books to ensure billing accuracy. GNAPs argues that the proposed audit rights provide Verizon with unreasonably broad access to competitively sensitive records.

2. Positions of the Parties

a. GNAPs

GNAPs argues it is unreasonable for Verizon to be privy to its competitors' books and records because they contain competitively sensitive materials which would be costly to sanitize (Exh. GNAPs-2, at 10; GNAPs Brief at 65). GNAPs further contends that Verizon already keeps computer records of call traffic exchanged between the Parties, and that the Parties already have in place a practice of verifying records on a monthly basis (Exh. GNAPs-2, at 10; GNAPs Brief at 65). Additionally, GNAPs states that Verizon pays GNAPs based on Verizon's count of minutes-of-use ("MOUs"), and that billing disputes involve GNAPs disputing Verizon's MOU count (GNAPs Reply at 26). Thus, GNAPs insists that Verizon does not need to audit GNAPs' information to verify traffic for billing (id.). GNAPs, however, states that it is amendable to providing traffic reports and Call Data Records ("CDRs") necessary to verify billing, stating that with CDRs available, there is no legitimate basis to insist on access to GNAPs' books and records (GNAPs Brief at 65). Finally, GNAPs asserts that Verizon's proof of allegations about an illegal billing scheme by GNAPs is nothing more than unproven allegations in a complaint it filed against GNAPs (GNAPs Reply at 26).

GNAPs states that § 7 of the General Terms and Conditions, § 8.5.4 of the Additional Services Attachment, and §§ 6.3 and 10.13 of the Interconnection Attachment are related to Arbitration Issue No. 9 (GNAPs Petition ¶ 70).

b. Verizon

Verizon contends that GNAPs' deletion of § 7 of the General Terms and Conditions, and § 10.13 of the Interconnection Attachment would delete all of Verizon's proposed audit provisions, and eliminate either party's ability to verify the accuracy of the other's bills (Verizon Brief at 105).[43] But, Verizon notes, audit provisions are common in the industry, including in Massachusetts (Exh. VZ-3, at 7; Verizon Brief at 107). In addition, Verizon asserts, GNAPs opposition is based on a misunderstanding of Verizon's proposal (Verizon Brieft at 105). First, Verizon notes that its proposal applies to both Parties (id. at 106). Second, Verizon points out that any audit would be performed by independent certified public accountants, and the audited party may request a protective agreement or order (id.). Finally, Verizon states its proposal is not unreasonably broad in that the audit is limited to records, documents, employees, books, facilities, and systems necessary to assess the accuracy of the audited party's bills (id.).

Verizon also points to GNAPs' history to support its audit proposal. Specifically, Verizon states that in New York, "Verizon uncovered what it believed to be an apparent illegal billing scheme that GNAPs implemented to overcharge Verizon millions of dollars under the guise of reciprocal compensation" (Exh. VZ-3, at 5, citing Verizon's Complaint filed in New York Telephone Company, et. al. v. Global NAPs, Inc. et. al., No. 00 Civ. 2650 (FB) (RL) (E.D.N.Y.)). Verizon argues that it wants to avoid history repeating itself, and insists that

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43 Verizon correctly notes that GNAPs fails to include any disputed language with regard to § 6.3 of the Interconnection Attachment (Exh. VZ-3, at 8; Verizon Response ¶ 210).

having an independent third-party accountant audit GNAPs' records is preferable to initiating litigation to obtain needed information (Verizon Brief at 110).

Moreover, Verizon contends that, although GNAPs does not include any disputed language in this section, the audit provisions of § 8.5.4 of the Additional Services Attachment relating to access to OSS provides Verizon with the right to monitor its OSS so that all carriers can receive uninterrupted and reliable access to this system (Exh. VZ-3, at 9; Verizon Brief at 107). Additionally, Verizon states that its OSS contains customer proprietary network information, which Verizon is obligated to protect and to release to authorized parties only (Exh. VZ-3, at 9: Verizon Brief at 107-108). To fulfil that obligation, Verizon asserts that it must be able to audit GNAPs' use of Verizon's database (Exh. VZ-3, at 9; Verizon Brief at 107-108).

Finally, Verizon argues that its proposal in this proceeding is similar to that which the Department adopted in MediaOne. More precisely, Verizon notes that in MediaOne, the Department rejected MediaOne's audit proposal because it was too broad and adopted Bell Atlantic's proposal, which Verizon states is nearly identical to the audit language Verizon proposes in this case (Exh. VZ-3, at 11, citing MediaOne at 140). In fact, Verizon states that its proposed § 10.13 and § 6.3 of the Interconnection Attachment contain identical language as § 6.3.13 and § 5.7.5, respectively, of the agreement between Verizon and MediaOne's successor corporation, AT&T Broadband (id. at 12). In sum, Verizon asserts that the language and rationale adopted by the Department in MediaOne is identical or substantially similar to the language and rationale applicable in this case (id.).

3. Analysis and Findings

We find that GNAPs' concerns are without merit. For instance, Verizon's audit proposal does not contain the broad audits rights which we previously rejected in MediaOne. Rather, Verizon's proposal is specifically aimed at auditing "books, records, documents, facilities and systems for the purpose of evaluating the accuracy of the Audited Party's bills" (General Terms and Conditions § 7.1) (emphasis added). Thus, Verizon's proposal is more akin to the specific audit rights we permitted in MediaOne, at 140, as well as in Greater Media, D.T.E. 99-52, at 79 (September 24, 1999). Additionally, Verizon's proposal addresses GNAPs' confidentiality concerns in that any audit is performed by independent third party accountants who are required to execute a confidentiality agreement (see General Terms and Conditions § 7.2). Finally, Verizon's audit provisions are symmetrical, and apply to Verizon as well as GNAPs. Accordingly, we adopt Verizon's proposed audit provisions contained in § 7 General Terms and Conditions and in §§ 6.3 and 10.13 of the Interconnection Attachment.[44]

Similarly, we find Verizon's proposed § 8.5.4 of the Additional Services Attachment reasonable and appropriate. We are convinced of Verizon's need to audit its OSS to ensure reliable access to this database, and to fulfil its obligations under Federal law to protect and to release to authorized parties only proprietary information contained in its database.

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44 Section 6 of the Interconnection Attachment addresses Traffic Measurement and Billing over Interconnection Trunks, and § 6.3 permits either party to audit all traffic to ensure that rates are appropriately applied. Section 10 of the Interconnection Attachment addresses Meet- Point Billing Arrangements, and § 10.13 grants both Parties the right to audit, subject to § 7 of the General Terms and Conditions, various components of access recording. GNAPs did not propose any changes to § 6.3, and proposed to delete § 10.13 in its entirety.

Accordingly, we adopt Verizon's proposed language for § 8.5.4 of the Additional Services Attachment.

Finally, GNAPs claims that there is no need for audit rights to verify billing, because Verizon pays GNAPs based upon Verizon's MOU count, and thus, any billing disputes between the Parties involve GNAPs disputing Verizon's MOU count. But, GNAPs did not provide any record evidence so that the Department could verify this claim. In fact, GNAPs first raised this claim in its reply brief. Accordingly, we do not accept GNAPs' claim.

In sum, we find Verizon's audit proposal is reasonable, and further find that GNAPs has failed to present convincing argument to support its modifications to the agreement.

I. Should GNAPs Be Permitted To Avoid Its Agreement To Permit Collocation In Accordance With Tariffed Terms? (Arbitration Issue No. 10)

1. Introduction

Verizon raised reciprocal collocation rights as a supplemental issue in its response. Verizon seeks the unconditional right to collocate at GNAPs's central offices, but GNAPs' proposed changes to Verizon's Interconnection Attachment §§ 2.1.5 et. seq. incorporate language that subjects Verizon's right to collocate in GNAPs central offices to GNAPs's sole discretion.

2. Positions of the Parties

a. Verizon

Verizon states that the Parties have agreed to language in the Collocation Attachment whereby GNAPs agrees to make collocation available to Verizon according to terms and conditions under GNAPs collocation tariff, if such tariff is in place (Verizon Brief at 114). If

GNAPs does not have a collocation tariff in place, Verizon states that the Parties have agreed to negotiate the terms upon which collocation will be provided if Verizon requests collocation (id.). Verizon notes that GNAPs has expressly requested that the Department approve undisputed provisions in the agreement, which would include the Collocation Attachment (Verizon Reply at 37).

Despite the agreed upon language in the Collocation Attachment, Verizon states that GNAPs seeks to add language into § 2.1.5 of the Interconnection Attachment that would subject Verizon's right to collocate to GNAPs' discretion (Verizon Brief at 114). Verizon asserts that GNAPs should not be permitted to undo that which it has already agreed to in one section by adding language to another section, and thus urges the Department to reject GNAPs' attempt to revise § 2.1.5 of the Interconnection Attachment (Verizon Brief at 114; Verizon Reply at 37). Moreover, Verizon dismisses, as lacking merit, GNAPs' argument that the agreement somehow discriminates between customers (Verizon Reply at 37). Verizon also argues that because GNAPs did not identify its proposed language for § 2.1.5 of the Interconnection Attachment as related to any of the issues in its complaint, the Department should not now address that language (Verizon Brief at 115).

Even if GNAPs had not agreed to permit collocation, Verizon contends that it should be permitted to do so (id.). Verizon argues that whether GNAPs is required by law to provide collocation is not the issue, noting that nothing in the Act prohibits the Department from allowing Verizon to collocate (Verizon Reply at 37; Verizon Brief at 115). Verizon further states that, because GNAPs determines all of the interconnection points under GNAPs' proposal, GNAPs could unreasonably limit the terms and conditions for Verizon's interconnection with GNAPs (id.). Thus, the Department should either permit Verizon to collocate, or prohibit GNAPs from charging distance sensitive transport rates (id).

Furthermore, Verizon argues that without the option to collocate, it cannot evaluate whether it is more cost effective to purchase transport from GNAPs or build its own facilities to GNAPs (Verizon Brief at 115). Verizon notes that several state commissions have ruled in its favor on this issue, and that fairness dictates that it have comparable choices to those of GNAPs (id. at 115-116). Verizon states that its proposal gives Verizon reasonable interconnection choices while GNAPs' proposal does not, and, therefore, the Department should adopt Verizon's proposed language in § 2.1.5 of the Interconnection Attachment (id. at 116).

b. GNAPs

GNAPs asserts that there is no state requirement for GNAPs to provide collocation but that it is company policy to do so for the convenience and benefit of its customers (GNAPs Brief at 66). GNAPs notes that it has never rejected a request by Verizon to collocate at GNAPs' facilities, nor has Verizon ever asked to collocate (id.). GNAPs insists that it welcomes customers, including Verizon, but that it cannot allow a customer to dictate terms and conditions that purport to involve GNAPs in discrimination between its customers (id.). GNAPs also indicates that it may not be able to match all terms and conditions requested and required by Verizon, and that GNAPs provides collocation through a corporate entity not a party to this proceeding (id.). In addition, GNAPs contends that there is no Federal requirement for GNAPs to provide collocation and urges the Department not to impose a state requirement that could potentially place GNAPs in the position of discriminating between customers (id. at 67).

3. Analysis and Findings

First, we do not attempt to determine whether GNAPs agreed during voluntary negotiations to grant Verizon an unconditional right to collocate at GNAPs' facilities. Nor do we need to. Consistent with the Wireline Competition Bureau, we agree that "there is simply no requirement that a petitioner for arbitration under section 252(b) must present the Arbitrator with the same language discussed during previous voluntary negotiations." Virginia Order at ¶ 57. Thus, we find Verizon's claims regarding GNAPs' attempts to "undo" that which GNAPs agreed to in the Collocation Attachment unconvincing. Our focus here is the disputed language in § 2.1.5 of the Interconnection Agreement, which subjects Verizon's right to collocate to GNAPs' discretion.

The Department has previously dealt with reciprocal collocation rights. Specifically, in MediaOne, at 50, we acknowledged that nothing in the Act specifically requires a CLEC to permit an ILEC to collocate at the CLECs' facilities. But, we also concluded that the Department may require, under state law, a CLEC to do so. MediaOne at 50. The Department, however, declined to impose collocation obligations on CLECs because we determined that such a requirement would conflict with a CLEC's right to interconnect at any technically feasible location it chooses. Id. This decision was upheld on reconsideration where we explained that "if BellAtlantic chose to collocate at MediaOne's facilities, MediaOne would be forced to accept that type of interconnection in lieu of, for example, a mid-span meet arrangement. Bell Atlantic's choice would limit MediaOne's options." MediaOne Reconsideration Order at 22. In the case at hand, if the Department were to grant Verizon's request for reciprocal collocation rights, we would be overturning our prior decisions on this issue. But, Verizon has not presented persuasive argument that would convince us to disturb our earlier decisions. The potential limitations imposed on a CLEC's interconnection options, if an ILEC decided to collocate at the CLEC facilities, remain our primary concern.

Likewise, Verizon's insistence that fairness dictates it have comparable interconnection choices as GNAPs rings hollow. The interconnection standards outlined in the Act for ILECs and CLECs are not symmetrical. Rather, the burdens imposed by the Act fall much more heavily on ILECs. Thus, appeals based upon fairness are not convincing. Accordingly, we reject Verizon's proposed language for § 2.1.5 of the Interconnection Agreement, and adopt GNAPs' proposed language. We find that GNAPs' discretionary grant of collocation rights to Verizon is consistent with our prior policy and with the Act. We further find no Federal or Department precedent for Verizon's alternative request that we prohibit GNAPs from charging distance sensitive rates, and we reject it accordingly.

J. Should GNAPs Be Permitted to Avoid the Effectiveness of Any Unstayed Legislative, Judicial, Regulatory or Other Governmental Decision, Order, Determination or Action? (Arbitration Issue No. 11)

1. Introduction

GNAPs seeks a provision in the interconnection agreement at General Terms and Conditions § 4.7 that would require Verizon to delay the effect of a change in law until such law is "final and non-appealable," regardless of whether the change in law is subject to a judicial or regulatory stay. Verizon proposes to give effect to all changes in law.

2. Positions of the Parties

a. GNAPs

GNAPs claims that, "no party should be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decision, order, determination or action" (GNAPs Reply Brief at 28). GNAPs further submits that both Parties should follow the law (GNAPs Brief at 67; GNAPs Reply Brief at 28).

b. Verizon

Verizon states that its proposed General Terms and Conditions § 4.7, a subsection of "Applicable Law," ensures that the contract reflects changes in law (Verizon Brief at 117). Verizon argues that GNAPs' proposal to delay implementation of a change in law until appeals are exhausted, even if the change in law is not subject to a stay, is "patently unreasonable" and "unfounded" (Verizon Brief at 117; Verizon Reply Brief at 38). According to Verizon, GNAPs' true motive is to "base Verizon MA's obligations on what GNAPs wants governing law to be, not what it actually is" (Verizon Reply Brief at 38) (emphasis in original). Verizon states that the Parties' agreement must recognize a change in law if the law is effective (Verizon Brief at 117; Verizon Reply Brief at 38).

Verizon further contends that GNAPs' proposed contract language that addresses discontinuance of service, payment, or benefit, specifying that it must be "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier" (see GNAPs' General Terms and Conditions § 4.7) is "superfluous and, thus, undesirable from a contract drafting standpoint" (Verizon Brief at 117). According to Verizon, it is "critical to Verizon that it have the right to cease providing a service or benefit if it is no longer required to [do] so under applicable law" (Verizon Brief at 118, footnote omitted; Verizon Reply Brief at 38). Verizon therefore asks the Department to adopt Verizon's proposed General Terms and Conditions § 4.7.

3. <u>Analysis and Findings</u>

GNAPs proposes two additions to General Terms and Conditions § 4.7 that the Department deems inappropriate. First, GNAPs' proposes to add the phrase "final and non-appealable" in reference to "any legislative, judicial, regulatory or other governmental decision, order, determination or action." The Department finds that this language, if adopted, would have the undesirable effect of staying the effectiveness of any change in law pertinent to the contract regardless of whether a judicial stay is ever requested or granted. Second, GNAPs proposes language that addresses discontinuance of service, payment, or benefit, specifying that it must be "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier." The Department finds that the interconnection agreement already specifies the terms and conditions under which Verizon may discontinue service, including the timing and other procedures relating to discontinuance, and thus, GNAPs' proposed language is unnecessary. Accordingly, Verizon's proposed language for General Terms and Conditions § 4.7 is adopted.

K. <u>Should GNAPs be Permitted to Insert Itself Into Verizon's Network Management to Prospectively Gain Access to Network Elements That Have Not Yet Been Ordered Unbundled?</u> (Arbitration Issue No. 12)

1. Introduction

This issue relates to General Terms and Conditions § 42 (Technology Upgrades), which discusses network upgrades and the responsibilities of interconnecting carriers. The disputed contract language relates to the consequences of such upgrades.

2. Positions of the Parties

a. GNAPs

In response to a Department question, counsel for GNAPs stated during the hearing that "[o]bviously the characterization of the issue pretty much lays out what a potential response would be anyway" (Tr. at 195).[45] In its brief, GNAPs offers no position on the issue because "Verizon framed the issue in such an argumentative and vague manner that Global cannot be expected to reply" (GNAPs Brief at 67). In its reply brief, GNAPs responds to this issue by stating that "Global wants some protections that as a customer it will (a) have access to the same technologies deployed in Verizon's network and (b) Verizon will not deploy new technologies which will affect Global's service quality without notice and adequate joint testing" (GNAPs Reply Brief at 28).

b. Verizon

Verizon argues that its proposed language in General Terms and Conditions § 42 (Technology Upgrades) is "necessary to memorialize Verizon's right to upgrade and maintain its

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45 In its Reply, Verizon framed Arbitration Issue No. 12 as follows: "Should GNAPs be Permitted to Insert Itself Into Verizon's Network Management or to Contractually Eviscerate the 'Necessary and Impair' Analysis to Prospectively Gain Access to Network Elements That Have Not Yet Been Ordered Unbundled?" (Verizon Response at 112).

network, ensure that GNAPs does not force Verizon to unbundle its network absent a requirement to do so, and make GNAPs financially responsible for interconnecting with Verizon's network" (Verizon Brief at 119). According to Verizon, the dispute on this issue relates to the consequences of technology upgrades, not whether Verizon has a right to upgrade its network (id.).

Verizon states that applicable law only requires Verizon to "provide GNAPs unbundled access to network elements that have been declared UNEs and that pass the necessary and impair test" (Verizon Brief at 119) (footnote omitted). Accordingly, Verizon claims that the language GNAPs adds requiring Verizon to offer fiber and "next generation technology" as unbundled network elements is unnecessary (id.). On the issue of financial responsibility, Verizon states that, "if GNAPs wishes to interconnect with or take services or facilities from Verizon, then GNAPs must ensure that its network is compatible with Verizon's network as it may change from time to time" (id. at 120). Verizon claims that this requirement is necessary to ensure that Verizon maintains its service quality standards and acts in a non-discriminatory manner (id.).

Verizon states that these issues were examined in the Department's Tariff No. 17 Order, and that § 42 of the General Terms and Conditions of its Redlined Agreement is consistent with the Department's prior rulings (Verizon Brief at 121). Verizon further states that its proposed § 28 of the General Terms and Conditions (Notice of Network Changes) of its Redlined Agreement "tracks the Department's findings and should be adopted in its entirety" (id.).

3. Analysis and Findings

In the Tariff No. 17 Order, at 147, the Department held that an ILEC's duty under Section 251(c)(5) of the Act "requires Bell Atlantic [now Verizon] to provide notice of its planned network changes and upgrades." Although the Department entrusted "Bell Atlantic [now Verizon] with the authority to make all final decisions with regard to its planned network changes and upgrades," the Department ordered Verizon "to provide a mechanism for CLECs to submit formal comments and suggestions as to proposed network changes and upgrades." Id. at 148. Therefore, Department precedent requires Verizon to provide GNAPs with notice of any network changes. We agree with Verizon that its proposed § 28 of the General Terms and Conditions is consistent with Department precedent and therefore adopt it.

As to the cost to GNAPs to accommodate Verizon's network changes in its own network, the Department found it unnecessary to "require Bell Atlantic to reimburse CLECs for costs associated with network changes and upgrades." Tariff No. 17 Order at 149. The Department affirms its prior determination. The Department finds no basis to shift responsibility for CLECs' costs associated with Verizon's network changes and upgrades; therefore, we reject GNAPs' proposal to do so.

Next, we find GNAPs' attempt to address Verizon's obligation to provide unbundled access to network elements, including next generation technology, goes beyond the requirements imposed by the Act. Verizon is not required to provide unbundled access to any and all network elements, but only to those elements that have been declared UNEs because they have passed the "necessary and impair" test.[46] Until next generation technology, a term which is not even defined by GNAPs, has been declared a UNE, Verizon is not required to provide unbundled access to it. Accordingly, the Department finds Verizon's proposed contract language for General Terms and Conditions § 42 consistent with Department and FCC precedent, and hereby adopt it.

V. ORDER

After due consideration, it is

ORDERED: That the issues under consideration in this Order be determined as set forth in this Order; and it is

FURTHER ORDERED: That the Parties incorporate these determinations into a final

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46 See Iowa Utilities Board v. FCC, 219 F.3d 744 (8th Circuit 2000).

agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) of the Act, within 21 days of the date herein.

By Order of the Department,

________/s/___________________________
Paul B. Vasington, Chairman

_______/s/____________________________
James Connelly, Commissioner

______/s/_____________________________
W. Robert Keating, Commissioner

_____/s/______________________________
Deirdre K. Manning, Commissioner